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No. 91-119

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

WISCONSIN DEPARTMENT OF REVENUE,

Petitioner,

v.

WILLIAM WRIGLEY, JR. COMPANY,

Respondent.

On Writ of Certiorari To
The Supreme Court of Wisconsin

JOINT APPENDIX

JAMES E. DOYLE
Attorney General
State of Wisconsin

F. THOMAS CREERON III
Assistant Attorney General
State of Wisconsin
Counsel of Record

Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857
(608) 266-8549

Counsel for Petitioner

BARBARA J. JANASZEK
Counsel of Record
RICHARD J. SANKOVITZ
Whyte & Hirschboeck S.C.
111 East Wisconsin Avenue
Milwaukee, WI 53202
(414) 271-8210

H. RANDOLPH WILLIAMS
Baker & McKenzie
130 E. Randolph Drive
Chicago, IL 60601
(312) 861-8000

Counsel for Respondent

Petition For Certiorari Filed July 19, 1991
Certiorari Granted October 7, 1991

JOINT APPENDIX TABLE OF CONTENTS

ITEM	PAGE
Omissions From Joint Appendix	i
Relevant Docket Entries	iii
Order Granting Writ of Certiorari (10/7/91)	JA-1
Excerpts From Administrative Record (R. 15) Before The Wisconsin Tax Appeals Commission (8-26-85, 8-27-85):	
Transcript of 8-26-85(T_1)	JA-2
Transcript of 8-27-85(T_2)	JA-46
Exhibit 13	JA-124

OMISSIONS FROM JOINT APPENDIX

The following memorandum decisions, orders and judgments have been omitted from the joint appendix because they are printed in the appendix to the petition for certiorari:

Item — Page

William Wrigley Jr. Co. v. Wisconsin Department of Revenue; Wisconsin Department of Revenue v. William Wrigley, Jr. Co., Wisconsin Supreme Court , Case No. 88-2265 (February 19, 1991) A-1

William Wrigley Jr. Co. v. Wisconsin Department of Revenue; Wisconsin Department of Revenue v. William Wrigley, Jr. Co., Wisconsin Court of Appeals, District IV, Case No. 88-2265 (December 7, 1989) A-46

William Wrigley Jr. Co. v. Wisconsin Department of Revenue; Wisconsin Department of Revenue v. William Wrigley, Jr. Co., Dane County Circuit Court, Case Nos. 87-CV-7468, 87-DV-7478 (October 19, 1988) A-78

William Wrigley Jr. Co. v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8591 (November 25, 1987) A-163

OMMISSIONS FROM JOINT APPENDIX - Cont'd

William Wrigley Jr. Co. v. Wisconsin Department of Revenue; Wisconsin Department of Revenue v. William Wrigley, Jr. Co., Dane County Circuit Court, Case Nos. 85-CV-6679, 86-CV-7696 (August 20, 1987) A-204

William Wrigley, Jr. Co. v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8591 (November 18, 1986) A-218

RELEVANT DOCKET ENTRIES

DATE	ITEM	LOCATION
12/23/87	Petition For Review No. 87-CV-7468	R. 1
12/28/87	Petition For Review No. 87-CV-7478	R. 2
1/11/88	Notice Of Appearance No. 87-CV-7468	R. 3
1/14/88	Notice Of Appearance No. 87-CV-7478	R. 4
	Return Of Administrative Record to Circuit Court	R. 15
9/19/88	Order Of Consolidation	R. 11
11/3/88	Notice Of Entry Of Decision And Order	R. 12
12/27/88	Notice Of Appeal	R. 13
10/7/91	Order Granting Writ Of Certiorari	JA-1

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 7, 1991

Mr. F. Thomas Creeron
Assistant Attorney General
Post Office Box 7857
Madison, WI 53707-7857

Re: Wisconsin Department of Revenue
v. William Wrigley, Jr., Co.
No. 91-119

Dear Mr. Creeron:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is granted. The case is set for oral argument in tandem with No. 91-194, Quill Corp. v. North Dakota.

Very truly yours,

/s/ William K. Suter

William K. Suter, Clerk

PROCEEDINGS BEFORE THE WISCONSIN
TAX APPEAL COMMISSION

TRANSCRIPT OF 8-26-85

[23]

Q If you please, would you state your name for the record and spell your last name?

A My name is Carl Bjorndahl, and my last name is spelled B-j-o-r-n-d-a-h-l.

. . . .

[25]

Q Now, you have indicated that you were assistant controller from late '69?

A I'm sorry. It was '76 that I was made the assistant controller. I just looked at a note I had here. I was hired in '63 as tax manager assistant controller from March of '76 through March of '83 at which time I was made manager of tax compliance systems.

Q During the period of 1973 through 1978, were you involved in state income tax matters for the Wrigley Company?

A I was involved in state and local tax matters, that is correct. Correct.

Q You understand the proceedings we are involved in today concern a Petition by the Wrigley Company challenging the assessment of income tax against the Wrigley Company from the years 1973 to 1978?

A Yes, I do.

Q Did the Wrigley Company file income tax returns in Wisconsin for those years?

A No, they did not.

Q Has the Wrigley Company ever filed income tax returns in the State of Wisconsin?

A No, they have not.

Q Were you involved in the decision not to file tax returns in the State of Wisconsin for the years 1973 to 1978?

[26]

A Yes. I was involved in discussions with management about our activities in the state, and upon consultation with legal counsel, we were advised and the decision was made not to file in the State of Wisconsin as we had protection under Public Law 86-272.

Q Were Wisconsin sales included in the sales tax in the sales factor in filing your Illinois State income tax returns for the years 1973 through 1978?

A Yes, they were.

Q Mr. Bjorndahl, I assume that the Wrigley Company files income tax returns in the State of Illinois?

A Yes, they do.

Q That is the state where Wrigley has it's corporate headquarters; is that correct?

A That is correct.

Q In addition to the State of Illinois, has the Wrigley Company at any time filed an income tax return in other states based upon the location of offices or manufacturing facilities in those states?

A Yes.

Q Has the Wrigley Company filed income tax returns in the State of Florida?

A We have. We have a sales office in Florida.

Q And in the State of Georgia?

A Yes, we have a manufacturing facility in Georgia.

[27]

Q State of Ohio?

A Ohio, we have an office.

Q And similarly with respect to the State of Michigan?

A Yes, we have inventory and an office in the State of Michigan.

Q Has the Wrigley Company, during the years that we are talking about, also filed in the State of California?

A Yes. We have a manufacturing facility and two sales offices in California.

Q During those years have they also filed in the State of Hawaii?

A Yes, we have storage of finished product, gum.

Q And similarly has the Wrigley Company filed in the State of Oregon?

A Oregon has a warehouse for the storage of finished product and an office.

Q And finally, has the Wrigley Company, during those years in question, presently file in the State of New Jersey?

A Yes, they are. We have a sales office in New Jersey plus a warehouse.

. . . .

[28]

Q Will you state -- I'm sorry. Are there any other states other than those we have mentioned in which the Wrigley Company has a sales office, a manufacturing facility, or a warehouse and for that reason has filed a state income tax return?

A No.

Q Now, in addition to those states which we have just named, it is my understanding that the Wrigley Company has at one time or another filed or agreed to pay tax by way of settlement in four other states; is that correct?

A That is correct.

Q Is one of those states the State of Pennsylvania?

A Yes, it is.

Q Do you recall the reason for Wrigley's filing in the State of Pennsylvania or the circumstances surrounding the filing in Pennsylvania?

A Wrigley was required to file a tax return in the State of Pennsylvania, and we had land located in the State

of Pennsylvania that we had bought for a potential factory; and therefore, there were filing taxes. However, we have since filed against -- filed a suit to refund -- for refund to the State of Pennsylvania and have received refunds for the years 1965 through 1981 and have been held not to be subject in the State of Pennsylvania and are currently paying tax only to the State of

[29]

Pennsylvania, a franchise tax, on the value of the land that we own and on the net rental income from land from an intended farm that we have in State of Pennsylvania; and we are paying no taxes on chewing gun activities in the State of Pennsylvania.

Q Okay. So any taxes paid in the State of Pennsylvania relate exclusively to the presence of the farm land and to farm operations in connection with that farm land?

A That is correct.

A There are no taxes paid with respect to sale of gum in the State of Pennsylvania?

A That is correct.

Q Mr. Bjorndahl, I'm going to show you what has been marked as Exhibit A. Could you identify that for me, please?

A Yes, I have seen this. This was formerly the letter we received from our Attorney Peter Picotte with the settlement of Pennsylvania.

Q And does that letter, set forth in Exhibit A, accurately describe the circumstances in the settlement with Pennsylvania?

A Yes, it does.

. . . .

[30]

Q It's my understanding, Mr. Bjorndahl, that the Wrigley Company has also paid a small amount of money via settlement in the State of Alabama; is that correct?

A That is correct.

Q Can you tell me the circumstances surrounding that settlement in Alabama?

A We received a letter from the State of Alabama requesting the William Wrigley Junior Company to file tax returns from 1932 forward based on the State's contention that we were doing business in Alabama. And upon discussions with management and with outside legal counsel, the Wrigley Company felt that we were not subject to the tax, but because of the amount of administrative duties involved and work involved and the cost of trying to develop tax figures for forty-three years, counsel suggested that we make a settlement to pay taxes in the State of Alabama for the years '74 forward and therefore, limiting the large amount of legal costs and administrative time and effort and labor on the part of

[31]

the Wrigley Company because it would not be worth the effort.
And so through our attorneys we agreed with the State of Alabama to file tax returns for the years 1974 forward. However, in most of the cases -- in fact all the cases -- I recall each of the years the reduction in the Illinois income tax was greater than the tax cost in Alabama, and from a business sense, the company

decided to make a settlement rather than to go into litigation and incur all those costs of litigation.

Q Do I understand that the notice from Alabama came in 1976?

A 1976, right. That's correct.

Q And it requested a filing of returns going back to 1932?

A That is correct.

Q And as a result of your discussions with the State of Alabama, the Wrigley Company agreed to pay tax for the years 1974 and 1975; it that correct?

A Right, that is correct.

Q And the amount of tax involved in those years for the year 1974 was two thousand seven hundred eighty-five dollars; is that right?

A That is correct.

Q And for the year 1975, it was six thousand nine hundred and fifty-three dollars?

[32]

A That is correct.

. . . .

[33]

Q Similarly to the State of Alabama, it's my understanding that in 1981 Wrigley agreed to settle with the State of North Dakota for a total payment for the years 1970 through 1979 of tax, interest, and

penalties of less than fifteen thousand dollars; is that correct?

A That is correct.

Q Was the decision to settle in North Dakota also a business decision which resulted from weighing of cost factors rather than agreement or assessment of the merits?

A Yes. The people involved with the tax, myself and the president of finance and discussions with outside counsel and looking at the total costs of the assessments involved with North Dakota, felt that the cost of litigation, administrative costs, and time and effort of people was excessive; and therefore, we would agree to pay the tax through the year 1982 and settle it on that basis. And then subsequently, the State of North Dakota has since agreed that the Wrigley Company is no longer subject to North Dakota tax and is not subject to filing returns from 1983 forward, that our activities are within the Public Law 86-272.

Q Lastly, it's my understanding that, at least for a period

[34]

of time, the Wrigley Company filed tax returns in the State of New York; is that right?

A That is correct.

Q Could you briefly describe the circumstances surrounding this filing in the State of New York?

A We had a sales office in New York for many years, and in 1971 it was decided to close the New York sales office and move it to New Jersey at which time we did move the office. Unfortunately, we goofed and made the mistake of filing returns for a period thereafter;

but however, in 1979 we filed for claims for refund for the years 1975 through 1979. And in '84 we had an administrative hearing with the New York State Tax Commission as to the taxability of the Wrigley Company in the State of New York, and the decision was that the Wrigley Company was not subject to taxes in the State of New York, however. It was rewarded to the parent company which was approximately five hundred thousand dollars. However, because of the size of the refund, we are now docketed or pending a hearing before the New York State Tax Commission, and this has been done because of the fact that the amount of money is so large that the audit control division of the finance department of New York wants a hearing on the decision by the referee that we were not subject to tax in the State of New York under

[35]

Public Law 86-272.

Q And that hearing is now pending?

A It is now pending, that is correct.

Q Mr. Bjorndahl, it's my understanding that orders for gum triggered or initiated by the activities of the sales representatives in the State of Wisconsin in the period of time of 1973 through 1978 were submitted to Illinois for acceptance and to be filled there; is that correct?

A That is correct.

Q Does the Wrigley Company have any bank accounts in the State of Wisconsin?

A No, they do not.

Q Does the Wrigley Company own any company trucks which deliver any of its products outside of the State of Illinois?

A We do not own any trucks. All deliveries are made by common carrier.

Q Is true by the State of Wisconsin?

A All over the United States. In most states common carriers just make all our shipments.

Q That was true for the State of Wisconsin in the years 1973 through 1978?

A That is correct.

Q Does the Wrigley Company report and pay unemployment compensation tax in Wisconsin, withholding tax for the

[36]

employees who are residing in the State of Wisconsin?

A Yes, we do.

Q Is the Wrigley Company licensed to do business in the State of Wisconsin?

A No, we are not.

Q To your knowledge, has the Wrigley Company ever filed a lawsuit in the State of Wisconsin?

A Not to my knowledge.

Q Does the Wrigley Company have an office in the State of Wisconsin?

A No, we do not.

Q Does the Wrigley Company have a telephone listing anyplace in the State of Wisconsin?

A No, we do not.

Q Is it customary practice, to your knowledge, for the sales representatives in the State of Wisconsin to carry business cards?

A Yes, it is. On those cards the address is shown as 410 Michigan Avenue, Chicago, Illinois with no reference to any Wisconsin address.

Q So are you saying the information on the cards is limited to the sales representative's name and the Wrigley Chicago office and 410 Michigan Avenue, the Wrigley Chicago office?

A That is to the best of my knowledge.

[37]

Q Does that reflect a company policy?

A Yes, it does.

Q Do Wrigley employees in the State of Wisconsin ever receive a reimbursement for a home office?

A No, they do not.

Q Does the Wrigley Company have any warehouse facility in the State of Wisconsin?

A No, we do not.

Q Does the Wrigley Company have any manufacturing facility in the State of Wisconsin?

A No.

Q Does Wrigley Company have any training facility or training center or other facility in the State of Wisconsin for training purposes?

A No, we do not.

Q Are all prices for Wrigley product determined in the State of Illinois?

A That is correct.

Q Does the Wrigley Company store any inventory other than the supply of samples carried by sales representatives in the State of Wisconsin?

A No.

Q Are any credit approvals or collections made by sales representatives or regional managers in the State of Wisconsin?

[38]

A Not to my knowledge.

Q Mr. Bjorndahl, are you familiar with whether the sales representatives in the State of Wisconsin carry a supply of display fixtures?

A Yes, they do.

Q Are those display fixtures carried on Wrigley's books as inventory or fixed assets?

A No, they are not.

Q And does the title to those display fixtures pass to the retailer upon placement by the sales representatives?

A Yes, they do. They become the property of the retailers.

Q Does the Wrigley Company reimburse its employees in the State of Wisconsin for certain expenses related to sales activities?

A Yes, we do. We do for overnight travel, meals, and lodging and for long distance phone calls, but there is no reimbursement for local calls or personal type expenses.

Q Does the Wrigley Company own automobiles?

A Yes, we do. We own all the automobiles. We lease them. The cars, they are all owned by the company.

Q And does the Wrigley Company reimburse its employees or pay the expenses of automobile maintenance and so forth?

A Yes, we do. That is correct.

Q Mr. Bjorndahl, does the Wrigley Company contract for or

[39]

purchase any advertising in the State of Wisconsin?

A No. All advertising, contracting, and purchasing of services is conducted in Chicago, Illinois. During this term of '73 through '78, it was Arthur Meyerhoff and Company and currently is now B, B, B and Lowe which acquired Meyerhoff and one other firm that is now handling some of the other work.

. . . .

[48]

Q Mr. Bjorndahl, could you briefly outline the history of the -- Let me backtrack a little bit. You mentioned that the Wrigley Company has filed, I believe, with the State of Alabama?

A That is correct.

Q And what were the years that it filed with Alabama?

A 1974 through current.

Q What is the nature of Wrigley Company's business activities in Alabama?

A They are basically the same throughout the country. However, there were instances in Alabama where

[49]

representatives picked up checks for collection matters which the department brought to our attention during that period and was the basis -- one of the bases for their contention that Wrigley was not protected by Public Law 86-272.

. . . .

[52]

Q And is it correct, as counsel has just said, that they were the same in Wisconsin as they were in Alabama with some exception relative to the representatives picking up checks for delinquent accounts?

A Yes, to the best of my knowledge.

Q And can I conclude from what you say that other than that list of states that you mentioned on direct

examination where there were offices, warehouses, manufacturing facilities, or things of that nature, that in all of the other states of the Union, the activities of field men, regional sales managers, and district managers would be the same as in Wisconsin and Alabama?

A To the best of my knowledge, they would be the same.

Q And do all of the incumbents of those positions countrywide do essentially the same thing?

A I would assume so. I don't know specifically if it is a fact, but from my information that I have been told, that is correct.

Q Now, what did the representatives in Alabama do besides picking up money for delinquent accounts?

A Just the same activities they do in the State of Wisconsin, I assume. I really don't know firsthand.

Q And what years were they picking up delinquent accounts?

A I don't recall. It was in the early 60's as I recall.

[53]

Q And how frequently did they pick up delinquent accounts?

A I really don't remember. There was one or two times in the one year that it occurred. However, the reasons we filed with Alabama was because of the economics because of the time period involved, the forty-three years that the company acquiesced, and we decided cost of litigation and administrative costs were so excessive that it was not worthwhile to spend that money to fight the State of Alabama. And as we

receive the actual refund from the State of Illinois, we were not about to go to fight for the State of Alabama.

Q And what are the years when you -- and I say you, the Wrigley Company, -- has filed franchise or income tax returns in the State of North Dakota?

A I recall we did it '70 through '82, but there again the tax was small and the cost of litigation and time and effort exceeded the economics, so the business decision was to go ahead and file. And then subsequently we have not been declared that we were not subject for the State of North Dakota from 1983 forward.

Q And is that determination by North Dakota amongst the papers that you have produced?

A There is a letter that is from the State of North Dakota agreeing to that. At least I thought there was.

Q Did Wrigley's business activities -- Strike that partial

[54]

question. Were Wrigley's business activities in North Dakota during the years 1970 through '82 essentially the same as its activities -- business activities in Wisconsin during years '73 through '78?

A That's correct.

Q What years did Wrigley file franchise or income tax returns in the State of New York?

A Well, it goes back a number of years. We ceased filing by filing claims for refund in the year 1975.

Q When did Wrigley close its sales office in New York?

A 1971.

Q And for years after 1971, what years did Wrigley file returns in New York State?

A '72 through '75 where we goofed, and in 1975 we realized it and filed claims for refunds from the period of time 1975 through '79.

Q Was Wrigley's only business activities in New York State in years '72 through '75 the same as it was in Wisconsin in '73 through '78.

A Yes, I believe so.

. . . .

[55]

Q Did the gum that we have been referring to as samples, was that carried on the books of Wrigley as inventory?

A Yes, it is.

Q And what are the display stands carried as?

A They are not carried on the books of the Wrigley Company at all.

. . . .

[58]

Q Would you state your name for the record and spell your last name, please?

[59]

A Sure. Richard Joseph Radosevic, R-a-d, like in David, o-s, like in same, e, as in Edward, v, as in Victor, i-c.

. . . .

Q And what position did you take with the Wrigley Company

[60]

in May of '78?

A I was a field sales representative.

. . . .

Q Does that mean that you were employed as a sales representative from May of '78 until you became a key account manager in January of '82?

A That's correct.

Q What are the functions of a key sales or key account sales manager? How did you describe that position precisely?

A Key account sales manager.

Q What are the functions of that position?

A Well. My responsibilities right now involve the contact of seven large accounts within the Chicago metropolitan area. These accounts are dictated by our company to be of large volume and of important status to the overall volume of the district in which I reside.

Q So are you saying that a key account is essentially a large account?

A Yes.

Q Would it be fair to say that your functions as a key

[61]

account manager with respect to these large or major accounts is essentially the same as the function of a field sales representative with respect to what are otherwise ordinary accounts?

A Somewhat, yes.

Q In what respect are the positions similar?

A Well, there is the initial account contact with the account for the purpose of improving sales of our products through that account and maintaining the sales that we presently have and those where the estimates are and that's you know the primary function of the job.

Q Okay. Where are you located now as a key account manager?

A I reside in Illinois.

Q Has there ever been a key account manager in the State of Wisconsin?

A Not to my knowledge.

. . . .

[62]

Q You were hired in 1978 as a result of responding to a newspaper ad; is that right?

A I believe so yes,

Q And at some point following your response to the newspaper ad, did you go through an interviewing process?

A Yes, I did.

Q Where did your initial interview take place?

A Big Boy Restaurant.

Q In what city?

A West Allis, Wisconsin.

[63]

Q Did you also go through other interviews before receiving a job offer?

A At least one other interview, yes.

Q Where did that interview occur?

A Another Big Boy.

. . . .

Q When you joined the Wrigley Company in 1978, did Wrigley have any type of formal training program?

A An infield type of program, on-the-job training program.

Q Could you describe that infield program a little bit more specifically?

A Sure. At the time I was hired, the general progression of events that the company followed was to have three or four present sales representatives train the new hired. That training took place either in the new

hire's territory or in the representative doing the training in his territory.

Q And where did your infield orientation take place?

A All four of my trainers trained me in my territory.

. . . .

[64]

Q Mr. Radosevic, did you ever attend a training workshop of any kind in the State of Wisconsin in 1978?

A No, I did not.

Q During the course of 1978, did you have occasion to attend a meeting of sales representatives in the State of Wisconsin?

A At least one time there was a meeting between my regional manager and about two other representatives.

A Is it your recollection at this time that that is all you can recall, just the one meeting that you just mentioned?

A That's all I know for certain, yes.

Q Where was this meeting held, if you recall?

A At a Big Boy Restaurant.

Q What was the purpose of this meeting?

A Well, the meeting that I can remember was simply to go over various company goals and objectives, status of accounts, and, you know, how I was doing as far as

was I feeling comfortable or not in the position that I was expected to do out there.

Q Would it be fair to say that this meeting was primarily informational in nature?

A That's the way I would take it, yes.

Q During the 1978 to 1981 period in which you served as a sales representative in Wisconsin, did Wrigley maintain an office in the State of Wisconsin?

[65]

A No.

Q During the '78 to '81 period in which you served as a representative in Wisconsin, did Wrigley own or rent any real estate in the State of Wisconsin?

A Not that I'm aware of.

Q During that same period of time, did you maintain an office in your home?

A Not really.

Q Why do you say not really?

A Well, if you want to call my kitchen table and the basement -- that was the extent of my office.

Q Did you take a tax deduction for an office?

A No, I did not.

Q Did the Wrigley Company reimburse you for any expenses in connected with that office?

A No.

Q During the period of time in which you served as a sales representative in Wisconsin this 1978 to 1981 period, did Wrigley have a listing in the telephone directory?

A No, they did not.

Q Was it you standard practice during the years of 1978 to 1981 to carry a business card?

A Yes, it was.

Q What information was included on this business card?

A Well, there was my name and, of course, the name of the

[66]

company, William Wrigley Junior Company, and there was an address and a phone number of our Bensonville district office.

Q Where is Bensonville?

A Bensonville, Illinois. It's one of the suburbs of Chicago.

Q Is that the district to which the State of Wisconsin belonged at that time?

A Yes.

Q During 1978 when you served as a sales representative, did you have occasion to receive telephone calls at home from customers?

A No.

Q During the period in which you served as a sales representative in Wisconsin, did you ever at any time have occasion to approve a grant of credit to a customer?

A Definitely not.

Q As a sales representative in Wisconsin, did you have any discretion whatsoever with respect to pricing of Wrigley products?

A No, I did not.

Q Who handled credit inquiries and approval on behalf of the Wrigley Company?

A To my knowledge, it was Chicago. That's where we sent all of our -- You know, any time a company sent in an

[67]

application or a request to go on direct status, the information was always sent to our main office in Chicago, Illinois.

. . . .

Q Did you have any input whatsoever with respect to the granting of approval of credit or the denial of credit?

A No.

Q During 1978 did you rent or lease any real estate for any purpose in connection with your business as a Wrigley sales representative?

A No, I did not.

Q Did you have occasion in 1978 at any time to rent a hotel room in connection with a call away from home?

A No, I did not.

Q Mr. Radosevic, would it be fair to say that the largest or major portion of your job as a sales representative was spent making calls on customers or potential

[68]

customers?

A Yes.

Q What types of accounts or customers did you call on?

A Well, we called on -- I called on both direct accounts and indirect accounts.

Q Could you define the term direct accounts?

A A direct account with our company is any account that is shipped gum from our -- from one of our manufacturing facilities, and the billing goes to that same account.

Q And indirect account?

A An indirect account is any account that would do business with one of those direct accounts; in other words, a retailer primarily.

Q Okay. And when you use the direct account, at that point in time you are essentially talking largely about wholesalers?

A Yes, wholesaler grocery chains, vendors.

Q Mr. Radosevic, when you made a sales call upon a customer or a potential customer, what was your goal or purpose in making a call?

A To increase the sales within that account.

Q How was this goal generally accomplished?

A Well, with a -- It varied a little bit as to whether the account was a direct account or an indirect account. With a direct account, you know, basically you knew what

[69]

kind of brand distribution that you had in that account and you knew their, say, their promotional history. So generally speaking we were trying to formulate a presentation which would get the approval of the account to take on new brand distribution or to take on a promotional offering and to increase their sales.

With an indirect account, you know, basically we would go into an account and conduct an in-store survey of the merchandising situation and see if there was opportunity to expand our package distribution or to get the account to buy in on a promotion during a promotional period so that they could increase their sales from that aspect.

Q And did you then subsequently make a sales presentation based upon the results of the in-store survey that you just described?

A Yes.

Q Did the activities in Wisconsin you might have engaged in in making a sales call include checking

products for outdatedness in exchange of stale product for fresh products?

A Yes, in the retail accounts.

Q When such an exchange was made, did you keep a record of it?

A No.

[70]

Q Do I understand that in making sales calls, you generally carried a supply of samples in your car that you utilized for the exchange of fresh product for stale products?

A Yes, I usually had a small amount on hand.

Q Until 1978, where was this supplier product kept or stored?

A Portion of it was in my garage, and another portion was in my basement.

. . . .

[71]

Q Okay. Back to my original question, would it be possible for you to estimate, either in terms of cases or in terms of dollar value, how much product you continually had on hand at any one time in your garage or home in 1978?

A Well, I would say on an average I might have had about fifteen hundred to eighteen hundred hundred stick boxes on any given month.

Q How many cases would that be?

A I really don't have any idea because again the various packagings, you know, makes it hard to calculate that.

Q Okay. Can you place an approximate dollar value as of 1978 on the quantity of gum that you have just indicated was typical of that period of time?

A I don't know. Maybe a thousand dollars.

Q In addition to the supply of sample gum that you have just described, did you also store or have on hand any other type of goods?

A There were occasions, maybe two, three times a year when

[72]

we would have a promotion, and at those points in time I may have had some promotional product.

Q Did you also have on hand or store display racks or equipment for purposes of displaying the product?

A Many of them.

Q On the average how many display racks or pieces, however you want to describe them, did you have on hand at any one time in 1978?

A I would say anywhere between forty to seventy-five cases.

Q And how many display racks were in a case?

A That also varied. Some of the equipment is what our company terms erector equipment which is equipment that is snapped easily together, and since it's all components, some of the cases had maybe a dozen pieces in them. And then if you get to some of our

actual preformed displays, there was anywhere between one and four displays per case as I remember.

Q These displays were furnished free of charge to accounts?

A Yes, they were.

Q Once these display racks were given to an account, they were owned by the account?

A As far as I was concerned.

. . . .

[73]

Q You were not required to account to the Wrigley Company for these display racks?

A No, I was not.

Q What was the reason or purpose in giving these displays to accounts?

A To increase sales.

Q Is there something unique about Wrigley products or about gum products in general which makes display racks or the display of the product of particular importance?

A Very much so.

Q What's that?

A Well, our product is very much impulse sales oriented to the consumer, and the more often the consumer sees our product, the more likely they are to buy our product. So the more locations that we can get within

a particular outlet, the greater possibility we have of selling that

[74]

product to the customer.

Q Did you find these display racks particularly useful in convincing a small retailer or a restaurant owner who had not been a previous customer of Wrigley to carry the Wrigley product and to purchase the Wrigley product?

A I would say so, yes.

Q Why was that?

A Well, generally it was a very good way for a retailer to gain an extra sale from a customer. If you are talking a grocery store, as the person is checking out, they have an opportunity to see the gum at the register. And you know, chances are pretty good that they will pick up a package as they are checking out with their grocery purchases. Restaurants are pretty much the same thing. If a person just finished a meal and they are up at the register checking out and they see the gum display, see they have forty cents coming back, they may decide to buy a package.

Q As a sales representative in the State of Wisconsin in 1978 from 1978 to 1981, did you have anything at all to do with accounts receivable?

A No.

Q During the 1978 to 1981 period in which you served as a sales representative in Wisconsin, did you ever accept a check from an overdue account?

[75]

A No, I did not.

Q During that period of time, were you ever directed by anyone in management or in a management capacity to accept a check or to request a check from a customer?

A No.

Q Who handled the payment and collection of accounts for the Wrigley Company?

A To my knowledge, the credit office down in Chicago.

Q Well, when the credit department in Chicago was experiencing a problem with collection of an overdue account, were you made aware of the problem?

A Yes, I was.

Q How were you made aware of the problem?

A I would get a copy of a letter that was sent to the account from our credit department.

Q How many such copies of letters did you receive in a year on the average?

A Maybe a half a dozen.

Q What did you do with these copies of collection department letters which you received?

A Disregarded them.

Q Did you as the usual practice toss them out and throw them away?

A Yes, I did.

. . . .

[78]

Q What kind of reports did you make?

A Well, I had a weekly expense account and an itinerary, and I think there was -- I think there was some type of recap that we did. I can't remember if it was on a weekly basis for the, you know, sales calls. Come to think of it, there was a daily report, too.

Q And what was the nature of the daily report?

A It was a computerized system where we inserted the calls that we made for the day and then we, like a college computer test or something, you darkened in a circle for the call number. And I think we kept track of distribution on that form, part of the survey that we conducted when we went into the store.

Q Now, when you say you kept track of distribution, what

[79]

distribution was it that you were keeping track of?

A Well, you know we have X amount of packagings and brands. As we surveyed the store, if they had all of our five stick and seven stick gum, then we would darken in all the appropriate circles for that.

Q So that was in the nature of a survey of your various accounts to indicate whether they carried a particular brand; is that the idea?

A Yes.

Q Who did you send that to, that report?

A I sent copies of it to the company that recapped those sheets, and I kept a copy for my own records and I --

. . . .

[80]

Q Okay. Now, what was the nature of the itinerary report?

A It's about a half of an eight and a half by eleven sheet of paper which asked you to jot down the future weeks, dates, and asks you where -- what city you are going to be in and if you are going to be, you know, in a motel, which motel.

Q Who did you send that to?

A A copy of that went to the district office and to the regional manager and to myself.

Q Would your regional manager have needed to know what your itinerary for the next week was?

A It's always possible.

Q And how frequently did you make that report?

A Once a week.

Q And you mentioned a recap report. Was that a recap that you made?

[81]

A Yes.

Q And who did you send the recap to?

A I really can't remember at this time.

Q And what was the nature of that report?

A Simply to recap my week's activities. I used it to try and help keep myself abreast at a future date, you know, so that the next time that I called on an account, I might know what I did the last time.

. . . .

[85]

Q What did you spend most of your time doing in 1978 when you were a field representative for Wrigley?

A Selling.

. . . .

[86]

Q Now, in 1978, what was a very typical day in terms of your activities as a field representative?

A Well, I'd get up in the morning and put on a suit and go out to the car, check to make sure that I had a supply of displays, small supply of gum that I could use for samples.

Q And how much -- how many displays and how much gum in terms of cases of gum?

A Maybe about -- maybe six cases of gum of various sizes and innerpacks and maybe about thirty to thirty-five assorted pieces of display equipment.

Q Okay. Now, was that gum ever sent to -- Was it always sent to you from Wrigley at your home?

A Always.

Q Was it ever sent to a storage company anywhere in Wisconsin for you to pick up?

A No.

[87]

Q Now, what did you do then after you got your vehicle outfitted?

A Well, then I would proceed to my first sales call. The majority of the time it would be a retail call.

Q And how many retail accounts in 1978 were you assigned to make calls on?

A Oh, there may have been -- There were about seven hundred on my report system, and there were an undetermined couple thousand more not on the report system.

Q And how many direct accounts did you have?

A Oh, somewhere between thirty and fifty maybe.

Q Okay. Well, let's say you hit a retailer as your first. How many calls would you schedule for a morning and how many calls would you schedule for the afternoon?

A Well, it would depend on the particular day, you know, what size accounts I was concentrating on, whether there were resets that had been given to me by a direct account or something that I had planned or, you know, whether it was simply strictly sales calls.

. . . .

Q And then did you give the retailer the full stand full of gum, or did you arrange for him to have to pay for it in

[88]

some way?

A No. Generally speaking, if we were dealing with a small stand, you would take the stand in and then ask him if he would, you know, get an order -- Not ask him. You would get an order from him at that time for the gum to fill that particular stand and that gum you knew, if you were dealing with a small stand like I just indicated, chances were ninety-five percent of those type of accounts were getting that product through a wholesaler. And we would then forward that to the wholesaler or our district office which would forward it to the wholesaler.

Q Well, I take it that if you put in the stand and it was a new stand, you took the gum out of your vehicle and transferred it to him there; is that correct?

A No, I would not say that's correct.

Q Well, did you ever stock new stands from your vehicle?

A I would say possibly on some -- on a few occasions.

Q And how many few occasions were there during your tenure as a field representative in 1978?

A Boy. I would just be guessing. Maybe a dozen times.

Q And just what would -- what all happened in that circumstance that you wound up putting in a new stand and taking the gum out of your vehicle and transferring it to the retailer?

A Well, like I said, primarily I wanted to get a stand in

[89]

and then he wanted to get that order through his wholesaler; but if he couldn't wait, if he said my wholesaler was just in yesterday or something or he was not going to be in for a week, he didn't want a stand sitting around, so we would then fill it and then bill the wholesaler. That paperwork would go into Chicago. They would bill the wholesaler. The wholesaler would then bill that particular account.

Q And what kind of paper did you send to Chicago in that instance? What was it called?

A It was called an agency stock check.

Q Agency stock check. Was that a printed form prepared by Wrigley?

A Yes.

Q And what information was contained on it?

A Simply listed the name of the accounts or, you know, the name of the account you were putting the merchandise into, the name of the account it was being billed through, your name, your territory number, a complete list of all of your items and the hundred stick box equivalent.

Q Well, what would be the largest amount that you would take out of your vehicle and put on a new stand in terms of dollar value that was your experience during this dozen times that you did this?

[90]

A Maybe fifteen or twenty dollars.

. . . .

[92]

Q Now, did you -- What did you do with the gum that was taken away that was stale?

A Destroyed it.

Q And how did you go about destroying the gum?

A I loaded it into my car, and I drove the car to the dump; and I watched a big bulldozer push dirt over it.

Q Is that your standard procedure?

A It was for me.

Q Now, did you ever have occasion to completely stock a retailer's display when all of the gum was stale?

A No.

[93]

Q Are you responsible for all the fresh gum that Wrigley sends you?

A Yes, I believe so.

. . . .

Q Well, when you first received a supply when you first took over the job and they told you what you were supposed to do and they gave you the gum, did they give you any kind of report or any summary or something that indicated that you were responsible for the gum that they had given you and you had to account for it periodically?

A Well, we use the agency stock transactions, the stock checks.

Q Well, how did you use the agency stock check?

A Well, when we got gum from the company, I would fill out how much gum I got from the company and sent the copy to the company.

Q And would you also fill out an agency stock check when you merely replaced some of it on the retailer's shelf at no charge to the retailer?

A No.

Q Well, how did you -- Weren't you getting red of most of this gum by giving it away to retailers?

A Well, I'm not -- I'm not clear what you mean by that.

Q Well --

[94]

A I gave some as samples.

Q Um-hum.

A But you said most. No, I did not give most away.

Q Well, okay. You got a supply of gum, and you always had a certain amount on hand; is that true?

A Um-hum.

Q You said you indicated about a thousand dollars worth?

A (Witness nods head up and down).

Q And part of your duties, as I understand it, was to go around and make sure that the gum that was being displayed was fresh; is that part of your duties?

A That's correct.

Q And when you found that some of the gum was stale, what did you do?

A Well, if XYZ store had five boxes of stale gum, I would take five boxes of stale gum out and I would give them five boxes of fresh gum.

Q So in that instance you were giving the gum away?

A No, I don't think so. I think I was exchanging it.

Q Oh, I see. All right. Perhaps some terminology, but you were exchanging the gum?

A Right.

Q And that's how I take it that you had occasion to transfer to the retailer's most of the gum that Wrigley sent you?

[95]

A That would be correct.

. . . .

Q Well, that's what I thought you said, so when you made out the agency stock check that went to your home office and in turn they billed the wholesaler for some gum, you billed the retailer, right?

A That would be correct.

Q And in that instance was the gum that the retailer received gum that he paid for?

A Yes, he would pay his wholesaler.

[96]

Q The wholesaler would pass it on to Wrigley?

A That would be correct.

. . . .

Q Mr. Radosevic, you have testified, I believe, that with respect to a survey or daily report that copies of that report were sent to one of the managerial offices, you retained one, and then another copy of that report went to another company; is that correct?

A Yes.

Q You don't know which company that was?

A I cannot recall the name of it, no.

Q Can you state with any certainty whether the company to whom or to which you sent that report was a company within the State of Wisconsin or outside the State of Wisconsin?

A It was definitely outside the State of Wisconsin.

[97]

Q Going book to the period of 1978 when you served as a sales representative in the State of Wisconsin, on the average what percentage of your working time did you spend making sales calls out in the field and preparing for sales calls?

A I would say about eighty-five percent of my time.

Q What percentage of your time was devoted to completion of the various reports that you have described today?

A Oh, maybe five percent.

. . . .

Q Would it be fair to say that that occurred on the average

[98]

of once a month?

A I would think that's a pretty fair lead in, yes.

Q Now, when you testified to putting in a display stand and stocking it, I believe you indicated that something was done on a daily basis. Did you, by your testimony, did you mean that placement of the display stand or giving of the display stand to the establishment occurred on a daily basis?

A That's correct.

Q Did you stock that display stand or utilize stock from your car in filling that display stand on a daily basis?

A No, I did not.

Q Where did the stock which was ultimately utilized to fill that display stand come from?

A The majority of the time it came from the store. In fact, you know, on many times when we placed a display, that's how we preferred to fill that display. If a store had, you know, excess stock of, you know, some

of our other packet sizes, then I could work out a swap similar to if they had unsaleable gum where I might take their overage in some packages and give them the pack sizes that went into that particular display; but the majority of the time the stock came from the store.

Q And was it your general practice at that time in 1978 to encourage the store and the store personnel to do the

[99]

actual stocking of the display?

A Whenever possible. I felt my job was sales and not stocking.

Q Was it also your practice in 1978 as a sales representative to encourage the account that you were doing business with to order the product through the normal channels; that is, the wholesaler or the direct account or that store account that store dealt with?

A Whenever and wherever possible.

Q Mr. Radosevic, you have also described a report which you have termed an agency stock check. Is that agency stock check in any sense an invoice?

A No. There is no mention of any kind of pricing on it.

Q Is that agency stock check in fact the way in which you, as a sales representative, accounted internally for the quantity of product which you kept on hand?

A Yes, that and, you know, so that a retailer would have a receipt.

Q When the stale product was picked up and subsequently destroyed, was that fact also noted on an agency stock check?

A Yes, it was. Anytime that, you know, the amount of unsaleable was significant in a store, it might just -- Well, if it was very significant, you would box it up and send it back to Chicago. If it was smaller quantity and

[100]

I did not have quantity to exchange for them, I might just take it out of the store and give them a receipt that I had picked it up. And then, you know, it would ultimately be destroyed. He would receive credit. I would sent it into Chicago, and the store would receive credit through its, you know, primary distributor.

Q When large quantities were found to be stale and you shipped them back to Chicago, by that you mean that a common carrier shipped it back to Chicago?

A Oh, yes, definitely.

. . . .

Q What do you do the other ten percent of your time? You mentioned eighty-five percent making sales calls, five percent on reports. Anything else you can think of?

A Well, you know, I understood her question to be, you know, weekly type reports. The other ten percent would have focused on just general correspondence.

PROCEEDINGS BEFORE THE WISCONSIN
TAX APPEALS COMMISSION

TRANSCRIPT OF 8-27-85

[2]

Q Will you state your name for the record and spell your last name?

A John Kroyer, K-r-o-y-e-r.

. . . .

[3]

Q And your present position then is district manager?

A Yes.

[4]

Q Headquartered in?

A Southfield, Michigan, suburb of Detroit.

Q Then to summarize you worked for the Wrigley Company initially in the capacity of field representative and that would apply to your experience in California and in St. Louis. In 1972 you were appointed regional manager and moved to Milwaukee and you remained in Milwaukee until 1976 when you were appointed district manager, and at that point your district manager position was with respect to the district which includes Michigan?

A Right.

. . . .

Q During the 1973 to 1976 period when you served as regional manager in Wisconsin, how many districts were there?

A I believe at that time the company had eight -- seven or eight. I'm not exactly sure.

Q And Wisconsin is generally part of which district?

A It filed as part of the Midwestern district base out of Chicago, Illinois.

Q And at that point in time, what other states were

[5]

included in the Midwestern district?

A Okay. We had, of course, the State of Illinois. We had the State of Wisconsin, a small portion of the Upper Peninsula of Michigan, the State of Minnesota, part of Iowa, North and South Dakota. I think that's basically accurate.

Q And the Wisconsin region in terms was composed of how many sales territories during the 1973 to 1976 period?

A It started with four, and it grew to five, the fifth one being consummated approximately January of '76 just prior to my going to Detroit, which was an out of state territory headquartered in Rockford, Illinois.

Q Each of those territories was worked by a sales representative?

A Correct.

Q Were all of the -- Were the four sales representatives who worked in that region during the '73 to '76 period working exclusively in Wisconsin?

A Yes. Four of them were, correct, two in Milwaukee. Well, no, only two of them were exclusively in Wisconsin. The two in Milwaukee were. I had Roger Cichocki in Green Bay. He worked the Upper Peninsula of Michigan, those three counties, Schoolcraft, -- I forget the other two. Then we had Rich Kuckkahn and Fred Ramage before that, who not only worked in Wisconsin, but also in Illinois

[6]

over to DuBuque, Iowa.

Q Could you estimate what portion of Rich Kuckkahn's and formally Fred Ramage's time would have been spent outside of the State of Wisconsin on the average during that period of time?

A I'd say in the range probably a third of his time.

Q And with respect to the sales representative who was working out of Green Bay, approximately what portion of his time during those three -- that three year period was spent outside the State of Wisconsin?

A Not nearly as much. Probably in the neighborhood of ten to fifteen percent.

Q Now, during that particular period of time, in addition to the sales representatives that you have just identified the territories that you have just identified, were there any other representatives working any portion of the State of Wisconsin who resided outside of the State of Wisconsin?

A Yes. At that time the Eau Claire and La Crosse areas were not part of the Milwaukee region. They were part of the Minneapolis region, and a representative of Minnesota came and worked that portion of the Minnesota region.

Q Mr. Kroyer, could you briefly describe the functions of a regional manager in the State of Wisconsin during the period of 1973 to 1976 when you served as regional

[7]

manager?

A The primary intent was to increase volume, increase sales, increase your distribution, and improve your merchandising.

Q During that period of time, there was no key account manager in the State of Wisconsin?

A No, there were no key account managers at that time.

Q Would it be fair to say that the regional manager in the State of Wisconsin during the '73 through '76 period were directly responsible for those key or manager accounts?

A Yes, directly responsible.

Q During that period of time, would it also be fair to say that the functions typically performed by a key account manager were generally performed by the regional manager?

A Along with certain representatives who had that certain responsibility, yes.

Q Approximately what percentage of your time as regional manager during the period of 1973 to 1976 did you devote to sales activities in connection with the accounts for which you had responsibilities?

A I'd say in the neighborhood of eighty to eighty-five percent of my time was spent in sales activities, either by myself, or working with the various field representatives within the region.

Q Just by way of an example, could you identify some of the

[8]

accounts which you would classify as typical accounts for which you were directly responsible during this period of time?

A Well, I had Kohl's supermarket. I had Sentry foods, and I took the major responsibility for our vending trade classification. And I was seeking out new business like with Farm and Fleet and Fleet and Farm, so I basically had that responsibility.

. . . .

[9]

Q Does that mean that you spent approximately fifteen percent, perhaps twenty percent of your time in connection with other types of responsibilities?

A Yes, mainly administrative reports, salary reviews, just the normal administrative activity.

Q During the 1973 to 1976 period in the State of Wisconsin, what processes, if any, were utilized with respect to training new hires in the position of field representatives?

A Well, at that time the company really did not have a formal training program. We did not have a training center like we do now, so the basic responsibility to see that a new hire was properly trained was in the hands of the regional manager. And I would set up the training schedule and that generally took approximately four weeks. What I liked to do with a new hire during those four weeks is have him work with just our top people so he got a good background and good understanding of the position, but there was no formal training program as such. It was determined by the regional manager at that time.

Q And all of this work with the top people was work that occurred out in the field?

[10]

A In the field.

Q And by in the field, you mean within the territory that the particular new hire was working?

A Wherever possible, correct.

Q Where he was going to be working?

A Yes.

Q So in fact during that period of time in which the new hire was being trained, was that territory also being worked?

A Yes.

Q In the normal sense of the term worked from the standpoint of what sales representatives were doing?

A Correct.

Q So the training and working went together?

A On the job training.

Q It all went at the same time? The training was not separated from the normal field responsibilities?

A No. All the training was done in the field.

Q During the '73 to '76 period in which you served as regional manager in Wisconsin, did Wrigley have occasion to hire new sales representatives?

A The only replacement that I had during that time was Fred in Madison, and then I hired Rich.

Q You are saying you hired Rich to replace Fred?

A Right.

[11]

Q Fred was terminated?

A Right. And we also had a retirement. Roger Abraham retired, and we replaced him with Greg Gabrys; and I believe just before I left Roger Cichocki resigned. And I did the preliminary interviewing for his replacement. Then Gary Hecht, when he came up to take my spot, he made the final decision on who he wanted, but I did the preliminary interviewing.

Q When a vacancy arose, was that fact typically communicated to the district manager in Chicago?

A Correct.

Q And would your district manager in Chicago make the decision as to whether the vacancy would be filled?

A Yes. I would recommend to the district manager, and he would take it up with Chicago; and the position would either be approved to be refilled or denied. I did not have the final say.

Q Once a decision had been made with respect to filling in the vacancy, you generally handled the process of locating an applicant and interviewing him?

A But that was my responsibility, correct.

Q How did you go about finding an applicant to interview?

A Well, hopefully we knew of someone who was looking for a job that was qualified. I personally did not like to put an ad in the paper, so I went through employment

[12]

agencies, both independent and I went through the Wisconsin resources.

. . . .

Q How did you and Richard Kuckkahn get together for purposes of an interview?

A I left word with three or four employment agencies around town as well as the state, and I gave them basically the criteria that I felt basically was required in a sales representative. And they would screen applicants, and when he had a number of them, I would go there.

Q So your initial interview of Richard Kuckkahn occurred in the office?

A I think it was Snelling and Snelling.

Q Is that here in Madison?

A Yes.

Q Did you interview Mr. Kuckkahn at any places other than the employment agency?

A Rennebohm's Drug and Restaurant.

Q Did you ever utilize a motel room for purposes of

[13]

interviewing an applicant for a job?

A I don't know. I always used the facilities provided by the employment agency or the state.

Q And after the interviewing process, if you found a applicant that you liked, did you then relay that information to the district manager in Chicago?

A Correct.

Q Who made the final decision with respect to hiring an applicant?

A Well, I made the final selection, and I made my recommendation to the district manager; and he either approved it or disapproved it.

Q When you served as regional manager in Wisconsin from the 1973 to 1976 period, did you maintain an office in your home?

A Yes.

Q Did the Wrigley Company provide you with any reimbursement in connection with the office?

A No, they did not.

Q During the '73 to '76 period when you were regional manager in the State of Wisconsin, was it your practice to conduct meetings within your sales force?

A Occasionally. I was not real big on meetings.

Q Now, during the period in which you served as regional manager in Wisconsin, did you hold a meeting of your

[14]

entire sales force?

A You want to know how many times during that three year interim?

Q During the three year interim or the entire year?

A It probably averaged one a year when we got everybody together.

Q Where were those once a year meetings generally held?

A At my home.

Q Did you ever conduct a meeting of that type in a motel-hotel situation?

A I think we had one meeting. In fact I'm positive we had one meeting at the Marriott. I think it was in Brookfield, but it was a combined meeting with my region and the Minneapolis region along with the district manager in conjunction with a package change at that time. We were predominantly a five stick package, and we converted to a seven stick package so

it was a rather extensive meeting. The package change was a very significant development.

Q Would you describe the content or discussions at the yearly meetings that you have just mentioned?

A Well, they were mainly sales strategy meetings, how we could get additional volume, how we could improve content merchandising. They were all related to sales, how we could get greater sales.

[15]

Q Would you characterize these meetings as training sessions?

A No, they were sales meetings.

. . . .

Q Did you on behalf of the Wrigley Company conduct any training work shops or meetings in the State of Wisconsin during the 1973 to 1976 period?

A No.

. . . .

[16]

Q How would you describe the functions of sales representatives in the State of Wisconsin during the 1973 to 1976 period?

A As I perceive it, their main function was sales increase, distribution, improve merchandising, and improve customer relations in the normal administrative work.

Q What does the term merchandising mean to you?

A It means to me they have the best possible display at the retail outlet that you can, the best location, adequate inventory in your fair share of that display space based on your market share.

Q Were these functions of selling, distribution, merchandising separate and distinct from one another?

A They were all intertwined.

Q Could you explain what you mean by that?

[17]

A We have -- Wrigley gum is a unique product. It's an impulse item. It's not a planned purchase where the housewife has on her list to by a loaf of bread, a quart of ice cream, and toilet paper. We are visible to the consumer. We don't sell product. You can take the same display and move it from a good location to a poor location, and it just collects dust. So sales and merchandise goes hand in hand due to the nature of our product. You have to have it visible to the consumer. They will not ask for it.

Q Mr. Kroyer, are you familiar with any studies which examine the impulse nature of a purchase of gum?

A DuPont did a study in the early 70's where it showed that Wrigley chewing gum was approximately a ninety-four or ninety-five percent impulse item; in other words, it's not a planned purchase.

Q Now, you have mentioned three categories of sales related activities which you identified as being interrelated and going in hand in hand. We have had some testimony in these proceedings with respect to the exchange of fresh product for stale product. Where would you place the sales representative's exchange of

fresh for stale products within your scheme of the functions of a sales representative?

A Oh, it's an important factor because it's one thing

[18]

that's of utmost importance that we have fresh product available to the consumer at all times. Nobody likes to purchase a stale pack of gum, a stale candy bar, and unless you keep fresh product available at all times to the consumer, eventually it's going to affect your sales.

Q Would you place it within the selling function as opposed to the distribution function?

A It's definitely a selling function. You want to ensure that the consumer continues to buy your product.

Q Again, going back to the description of the functions of the sales representative which you have just provided to us, your talk of selling distribution and merchandising as you have defined the term, drawing on your experience as a regional manager in the State of Wisconsin during the 1973 to 1976 period, can you recall any specific occasions where your efforts, for example, in the distribution area ultimately resulted in a substantial number of orders being placed?

A I think probably the prime example would be Kohl's supermarkets. I believe when I came to Milwaukee, they had approximately a forty-five percent share of the market and at that time only had one package size in Kohl's supermarkets. We had six pack at the checkout, and for the type of outlet and the volume they do, that was just not sufficient.

[19]

So we were able to convince them to take on our plenty pack size, which is the seventeen stick package, to the checkout and take on our ten pack packaging and place it in the body of the store in the candy gondola. And just to show you the volume, we went probably from zero packs of plenty pack being sold in Kohl's a week, to somewhere between eight and twelve thousand packages being sold a week, and on the ten pack we went from no ten pack sales in Kohl's to probably fifteen hundred to two thousand bags a week.

Q And those sales ultimately translated into orders being placed with the Wrigley Company for that quantity of gum?

A Correct. And we also spent considerable time with accounts like Farm and Fleet and Fleet and Farm who, up until they took on Wrigley chewing gum, did not handle confection items. And I believe they now do a quarter million dollars a year in chewing gum, and when he first started knocking on the door, they didn't even carry Wrigley chewing gum products.

Q As a result of your experience in working for the Wrigley Company in a number of capacities, it's over a period of I believe approximately twenty-three years, have you become familiar with normal selling practices and procedures utilized by manufacturers of gum products?

A Yes, I believe I did.

[20]

Q Are Wrigley's procedures with respect to selling and distribution activities and so forth typical of the selling procedures utilized by other manufacturers of gum?

A Correct.

Q Mr. Kroyer, we have had testimony in this proceeding with respect to a supply of sample product which is carried by the sales representatives in their car and stored in their home or in their garages. Are you familiar with the fact that sales representatives typically had on hand a supply of gum product?

A Yes.

Q And I believe it would also be accurate to say that we have had testimony in these proceedings about that supply of gum being used for purposes of furnishing samples for purposes of replacement of gum and in some instances for purposes of what's been termed a display in stock situation?

A Correct.

Q Could you rank those functions of the gum supply as we have identified it in terms of significance or importance to how much -- you know, which of those matters, sample replacement, the display, and stock, was represented as the greatest use of this?

A Oh, by far and away the greatest usage is exchange of

[21]

product probably in the ranks of eight-five, eighty percent that the representative has on hand for the use of outdated product or for the balance of stock within a retail outlet.

Q And what portion is utilized as samples?

A I'd say eight to ten percent, somewhere in that nature.

Q And approximately what portion then would be utilized in the display and stock situation?

A Probably in the neighborhood of five percent of the total stock.

Q Now, directing your attention to the 1973 to 1976 period when you served as regional manager in the State of Wisconsin, could you estimate for me the approximate dollar value of the supply of product typically kept on hand?

A Give me a second to try to remember how much our product cost then. Probably somewhere in the neighborhood of one thousand bucks.

Q Now, that supply of product that we are talking about valued at approximately a thousand dollars, did that consist only of new fresh product?

A No. It was a total of new plus the outdated.

Q About what portion of that product typically represented outdated product that had been changed by the representative?

[22]

A Oh, that would vary from time to time, but probably in most instances an area of thirty-five to forty percent. At that time we had to case it up and return it by common carrier to our Chicago factory. We did not dispose of it locally at that time. It was all cased up and returned to Chicago.

Q Mr. Kroyer, can you identify Reynolds Transfer and Storage?

A Yes. In the summer of 1973, I can't remember the exact date, July or so, unfortunately, I had a

termination and I was stuck with the company car, agency stock, and all company properties. So I looked around for a place to store those materials locally until I could find a replacement for Fred. And it took three or four months to find a replacement for Fred, so in the interim I stored all the materials at Reynolds storage. He had the facilities and his rental was reasonable, so I, on a month to month basis, rented out space and I paid Reynolds and placed a charge on my expense account.

Then when we hired Rich. He lived in an apartment house, and he had no means to store the chewing gum and our displays. So I got permission from the company to have him store it locally until he bought a home, and I think he continued on with Reynolds on a month-to-month basis.

[23]

Q Was the company policy at that point in time, '73 to '76, to the effect that the sales representatives would store the display stands and gum in their homes or garages?

A Correct. That was the common practice but in Rich's case, living in an apartment, he didn't have the means.

Q So this was an exception to the rule?

A Yes.

Q Made on the basis of the specific facts of the situation?

A Correct.

. . . .

[24]

Q During the 1973 to 1976 period in which you served as regional manager in Wisconsin, who was your district manager?

A Gerry Marx.

Q Mr. Marx resides in Illinois and was headquartered in Chicago?

A Correct.

Q Could you briefly describe Mr. Marx's functions as a district manager?

A Well, at that time the district manager, as it is today, is ultimately responsible for all activities within a Wrigley sales district. And Gerry oversaw the four or five regions at that time that were in the Midwestern sales district. He was accountable for all activities, sales volume, account problems, whatever it might be.

Q Did Mr. Marx at that time also have direct contact with accounts?

A Yes. Gerry was very good about getting out and being with the accounts, offering any assistance he could.

Q During the 1973 to 1976 period, did Mr. Marx have occasion to come to Wisconsin in connection with his duties as a district manager?

[25]

A Yes, he did.

Q Approximately how many working days in the course of a year during that '73 to '76 period did Mr. Marx spend in the State of Wisconsin?

A I'd say during a given year Gerry was probably in Wisconsin working usually five, six days a year.

Q And were some of those days or parts of those days spent out in the field?

A All of them were. Like I said, Gerry was very account minded. He either spent time with me, or we would actually work with field representatives for a day.

Q Did Mr. Marx ever have occasion to attend a sales meeting, one of your annual sales meeting?

A The only meeting that Gerry ever attended was the one that I alluded to we had in Brookfield which was a combined meeting with my region and Minneapolis region. Other than that he never attended a sales meeting.

Q During the 1973 to 1976 period in which you served as sales representative in the State of Wisconsin, did the Wrigley Company maintain an office in the State of Wisconsin?

A No.

Q And during that same period of time, did the Wrigley Company own or rent any real estate in the State of Wisconsin?

[26]

. . . .

Q And during that period of time when you were regional manager in the State of Wisconsin, did you, as regional manager, or any of your sales representatives have any discretion with respect to pricing of products?

A None whatsoever. All pricing is determined by our corporate headquarters in Chicago.

Q Who handled credit inquiries and approvals on behalf of the Wrigley Company?

A The credit department.

Q Located where?

A Chicago, Illinois.

Q You never at any time had anything to do with the extension, denial, or granting of credit to any customer in the State of Wisconsin while you were regional manager?

A No.

Q Mr. Kroyer, going back over the twenty-three years in which you have served in a number of capacities for the Wrigley Company, did you ever have occasion to pick up a check from a customer?

A I did pick up a check one time years and years ago. The

[27]

account was so embarrassed the invoice hadn't been paid, he insisted I take the check. That's the only time I ever actually received payment.

Q And that did not occur in the State of Wisconsin?

A No, no.

Q California?

A Yes, little town called Manteca, California.

. . . .

Mr. Kroyer, while Mr. Greenwald is getting ready to ask, I'll insert one question. Suppose X opened a new supermarket and wanted to carry gum, how would he contact Wrigley to get started without a telephone listing, probably without intimate knowledge of the corporate headquarters?

THE WITNESS: Well, it can happen one of two ways. You can either place an account on direct basis if they fit the criteria, and if that's the case, you have them fill out an application and a financial statement which is submitted to Chicago for approval or disapproval.

COMMISSIONER SMITH: All right. But this, as I understand the system, would necessarily require contact with a sales represent?

[28]

THE WITNESS: Correct.

COMMISSIONER SMITH: What happens when X wants to start but he doesn't know the sales rep, hasn't ever had any contact with the sales rep?

THE WITNESS: Generally if it's an independent account, we get word through one of our wholesalers. The contact will contact a candy jobber inquiring to see a Wrigley presentation like a chewing gum display. That's generally how we come across, and in a lot of instances if it's a brand new account, our representatives, as they work in the territory, spot the new building under construction. And when it gets close to opening, they contact us themselves.

. . . .

Q Mr. Kroyer, you mentioned that you had an office in your home during the years 1973 through 1976; is that correct?

A Yes, sir.

Q And could you describe what that office consisted of?

A Okay. I had a pretty good sized basement so I took a far corner, and I had a good sized desk there. I had my files and everything pertaining to the job. I had a

[29]

phone down there. It was just my in-home office.

Q In the office did you have any equipment that was furnished you by Wrigley?

A I had one company issued file cabinet.

Q And was that the extent of your office?

A Yes.

Q Did you have occasion to store any product in your home for any reason?

A Yes, I did.

Q And what was the nature of that or extent of it?

A I just kept small amounts of gum on hand for sampling purposes when you make a retail call or headquarter call or presentation.

Q How about display stands?

A A few.

Q And how about promotional literature?

A During the promotional period, I did keep some promotional materials on hand.

Q Did you keep an amount that was as much as a field man would?

A Oh, not even close.

Q How much promotional literature in terms of dollar's worth would a field man have as a normal supply of promotional literature?

A You are talking about a point of sale material, cardboard

[30]

signs, that type of material?

Q I'm sorry. I didn't catch the first word.

A I don't quite get your question. What they had on hand majority of time was point of sale materials, cardboard signs, pricing signs.

Q Well, aside from that was there anything they used in connection with doing their jobs other than the point of sale material, signs, and things like that? Was there anything in the nature of literature?

A We would -- They would have sales bulletins and literature, bulletins, brochures he would leave with the accounts.

Q And what would be the value of that kind of material the field men might have?

A Couple hundred bucks maybe. That's just a guess. All the materials are supplied from the corporate office.

Q Now, what was the purpose of the office that you maintained in your home?

A So I could coordinate the sales activities and keep my thumb on top of all regional activities.

Q Do you have -- Did you also prepare your reports to your supervisor at that office?

A Yes. I had all the account files there and all the representative files, all the personnel files that pertained to them.

Q And what percentage of your duties might have been preparing reports for your supervisor?

A I would say overall I probably spent about fifteen percent of my time on administrative duties; that being reports, salary descriptions, whatever it might be.

Q And were you a resident of Wisconsin at that time?

A Yes, I lived in West Bend.

Q And did you take an income tax deduction for your office in your home?

A Yes, I did.

Q Now, if I understand correctly, you weren't reimbursed any money by Wrigley in connection with that expense that you incurred?

A No. The only thing I claimed on my income tax was square footage because the company reimbursed me for telephone calls and that.

. . . .

[32]

Q And am I correct in my understanding that after the time Mr. Kuckkahn was hired and up until the time you left, his stock of gums and displays were sent by Wrigley to Reynolds storage for him?

A I'm trying to -- Yes, I'm sure they were sent there.

Q And then I take it that if he was going out on the road and planning his calls and in order to get this gum into his reach that he would just make a stop at Reynolds and draw down whatever he need for his activity and then go about his activity?

A Yes. I think he would generally pick it up maybe even on the way home so he would be prepared the next morning.

Q And I believe you testified that it was in '74 that Mr. Kuckkahn was hired?

A I think we hired Rich in '73 if I'm not mistaken.

Q Oh, I'm sorry.

A I think sometime in the fall, late September, early October. I don't know the exact date.

Q What did you do in connection with obtaining company approval of having Mr. Kuckkahn have his gum and displays stored at Reynolds? Who did you contact?

A I'm just going off faint memory, but I believe I had to contact my district manager Gerry Marx.

Q And I take it you told him the situation, and then he said, "Okay, Rich can store the stuff at Reynolds"?

A I think, yes, that's probably how it happened.

Q And how was Reynolds paid for the -- for whatever they charged?

A I think during the interim where we didn't have Rich, I paid Reynolds once a month. They gave me a receipt, and I placed it on my expense account.

Q Did you then take care of it in that manner through until the time you left?

A No. Once Rich was aboard, he took it over. I just it did it on an interim basis.

Q I see. So Rich then put whatever Reynolds charged on his expense account. Did Rich's expense account then go to you for approval?

A A copy of it did, but our expense accounts all go to Chicago.

. . . .

[34]

Q Did you ever get involved in your tour of duty in 1973 through 1976 relative to any credit problems?

A For the most part no. Occasionally, yes. Generally by the time we received a copy of any correspondence regarding credit sent to the account, it was already taken care of in past history. I never interceded or took any effect until a letter got rather nasty with a real good account. Then I would intercede to the point where I would see if I couldn't get the account in Chicago together to find out what the problem might be, but I never in fact tried to collect. I tried to find out what the problem might be, and if it was a mistake on the Wrigley Company's part, we

straightened it out or if the account had a problem or if the account was having some temporary financial difficulties, I would take it to our credit department on behalf of the account and see if we couldn't get some shipments made. And then when the account was fully recovered, you had a loyal Wrigley customer where if you don't try to see a good account

[35]

through a little bit of difficulty and he does recover, you haven't helped him out. Then you have an adverse account.

Q Well, during that three year period, and what I'm talking about would be 1973, '74, and '75, that would be the major portion of the time that you were the regional manager, in what manner during that entire period would you intercede in a credit related problem? What would you do if you interceded?

. . . .

A I basically did what I just illustrated. I tried to find out what the problem might be and get the account and our credit department communicating to see if we couldn't solve the problem so we still had a good customer.

Q Okay.

[36]

A My job is to sell it, not collect it.

Q It sounds like you were kind of a mediator between the account and the credit problem that was creating some static; is that the idea?

A That's it.

Q And that's the nature of any intercession on your part?

A Yes. I basically sell it, and the credit department collects for it.

Q And during that three year period, how frequently would that occur?

A Probably a couple, three times a year. I mean it was not a frequent occasion.

Q Well, would that be a time consuming activity or very -- just kind of a day? Would it take you a day?

A It was not that time consuming, no.

. . . .

[42]

Q In 1973, if I recall your testimony, you indicated -- Or let me strike that. In 1973 did you supervise four sales representatives in your region?

A Yes.

Q Was the same true up until the time you left your position in May of 1976 and went onto your district sales?

A March of '76.

Q I'm sorry. Is it March of '76 that you went? Did you always have four sales representatives to supervise throughout the time you had the position from, let's say, January 1, 1973 through March 1976?

A What we did is we added a territory and a representative in Rockford, Illinois.

A When did you add that territory?

A It was either late '75 or early '76 just prior to my going to Detroit, and then during that period of time, we had one additional hire in Milwaukee because we were having a pending retirement.

[43]

Q Well, in other words, the Milwaukee hire was in anticipation of a vacancy?

A Correct.

Q So I take it that it was anticipated that at about that time the staffing would be for five sales representatives within the Milwaukee region?

A Correct.

. . . .

[44]

Q I think you indicated that the regional staff was fairly stable during the period that you were in Wisconsin and that you only had occasion to hire one person; is that correct?

A We only had one termination.

Q During the three years approximately?

A Yes, one termination.

Q Now, what was the nature of that termination? Was the person discharged?

A Yes.

Q What was the name of the individual who was discharged?

A Fred Ramage.

Q And how do you spell Ramage?

A I think it's Ramage. I believe that's correct.

Q And did you have authority to discharge a field representative?

A Well, the final say was with the district manager, but this was a rather spontaneous on the spot dismissal; but

[45]

the ultimate decision relied with the district manager.

Q What role did you play in Mr. Ramage's termination in terms of what did you do?

A I terminated him.

Q And what information did you h ave at the time you took that action?

A He was not working.

Q So what was it related to?

A Job performance or lack of, and the district manager was aware of the problem.

Q Did you regularly make performance evaluations regarding Mr. Ramage?

A Yes.

Q And how frequently were those made at that time?

A Let's say on the average of once a year a formal review.

Q When was Mr. Ramage terminated?

A It was probably June or July, somewhere in there, of 1973.

. . . .

[46]

Q And did you discuss the contemplated action with your district manager?

A Correct. I discussed it with Fred and gave him every opportunity to change his ways.

Q And what conclusion did you then reach as to whether Mr. Ramage should be terminated or not?

A I don't quite get that.

Q I take it you reached a conclusion at some point in your own mind that it would be better for the company if he

[47]

didn't work for Wrigley?

A Correct.

Q And did you then tell your supervisor what your recommendation was?

A I told him in advance if I found what I thought I'd find, I was going to dismiss Fred, and he agreed.

Q And that was Mr. Marx that you did recommend this to?

A Correct.

. . . .

[48]

Q And did Mr. Marx give the final -- Well, let me put it

[49]

this way. Did you decide that Mr. Kuckkahn was the best candidate for the position?

A Yes, I did.

Q And did you make a recommendation to Mr. Marx that Mr. Kuckkahn be offered the job?

A Yes, I did. Then I had to explain his background and everything else.

Q Did you have any leeway in terms of the salary you could offer Mr. Kuckkahn as a starting salary?

A None whatsoever. That's all predicated and determined in Chicago. Our starting salary for field representative is the same throughout the country.

. . . .

[50]

Q The Exhibit 7 that we have had made some reference to here, on the first page in the paragraph that's at the bottom of the page that starts the management of the region's field force and so forth, on the third line

[51]

there is a reference to the regional sales manager actively participating with the district manager in the orientation of the region's field representatives. What does that word orientation mean?

A It means on the job training. You go through all the particulars of the job duties.

Q Did you engage in that kind of orientation with Mr. Kuckkahn?

A Yes, I did.

Q How much time was involved in that on your part? How much of your time did it take to orient Mr. Kuckkahn in his position?

A Well, the majority of it was done initially by the trainers.

Q And who are the trainers?

A I think probably Ron and Roger Cichocki.

. . . .

[52]

Q Now, how did the -- Was Ron and Roger -- were they sales representatives?

A Yes. One lived in -- Ron lived in Wauwautosa, and Roger lived in Green Bay.

Q Now, did the trainers get the training assignment from you?

A Basically, yes. I laid out what I wanted accomplished week by week by week.

A And which territory did the training take place?

A I think in Rich's case it took place within his retail territory or a soon to be retail territory.

Q Now, within the Milwaukee region there were four areas,geographic areas, that were assigned to sales representatives; is that correct?

A Correct.

Q What are those geographic areas called?

A Just retail territories.

Q So in connection with Mr. Kuckkahn assuming his duties, I take it that you directed these other gentlemen to leave their own home retail areas and ride with Mr. Kuckkahn in his area?

A Correct.

[53]

Q There is a reference to field training immediately after the reference to orientation. Is that something different than orientation?

A No, they are both the same thing. They are combination of the two. The orientation and the field training are all done at one time.

. . . .

Q And in performing your duties as Milwaukee regional sales manager, did you assign yourself a territory, a retail territory?

A No, I did not. I had the ultimate responsibility to the entire region.

Q How many direct accounts did you see yourself during that period just on an average?

A Well, the major ones were Kohl's and Sentry, and like I

[54]

said earlier, I took responsibilities for the majority of the vending trade class. So I could have called on twenty or thirty vendors, the large important vendors to the region.

. . . .

Q What would be an average assignment of a field representative in terms of the number of direct accounts assigned?

A It could range anywhere from four to six hundred and fifty.

Q Is that four hundred to six hundred and fifty or just four?

A Four hundred to six hundred and fifty.

. . . .

[57]

Q Let me get rid of the rule of thumb. I think we might place undue emphasis on it. In performing your duties back in '73 and '76, how much time did you spend taking care of Kohl's, Sentry, and the vending classification as well as doing whatever you do in securing those accounts and having good relations as

opposed to having contacts with your sales representatives and, for instance, going riding with them for a day?

A I tried to spend a minimum of fifty percent of the time with the field representatives. Then my other responsibilities such as calling on the direct accounts myself and/or territory analysis took another thirty, thirty-five percent of my time. So field activities probably took eighty, eighty-five percent of my time.

. . . .

[58]

Q Did you have any function with respect to the promotion of sales representatives within your region? Was there anyplace to be promoted?

A Not at that time, not within the region, because at that time we didn't have key account positions and some of the positions we now have.

. . . .

Q Did the regional sales manager also make recommendations regarding raises for the sales representatives?

A Correct. I would recommend, and Gerry would have the

[59]

final say as to the date and the amount. I would only recommend.

. . . .

Q And does the district sales manager get involved if, for instance, if the regional sales manager figures, well heck, this is just one territory. He's all out of size with regard to another. We have got -- I have got to reassign this. Does he just go ahead on his own and reassign the area to someone else?

A Well, if you realign it, you do so. Then everything is

[60]

submitted to the district office.

Q I see. And is realignment a process or redrawing territory lines?

A Correct.

Q And suppose you made a decision that these territory lines should be redrawn, do you redraw them and then submit them for the approval of the district office?

A Correct.

Q And then Mr. Marx would be the authority that would say, "Yes, that's a good idea"?

A He might say, "Sounds great. Go ahead and do it. Looks good."

Q Did Mr. Marx ever, when you proposed to redraw lines, did Mr. Marx ever say to you, "I don't like that"?

A No.

Q Did you assign duties to the sales representatives as a routine matter?

A What do you mean by duties?

Q Well, for instance, did you tell them, "Well, I want you to take this particular account and do it," or "I want you to go into the City of Wausau and go to all the supermarkets," or things like that?

A Yes. I basically determined the day-to-day activities.

Q Would that be fairly illustrative of you making work assignments to some of the sales representatives?

[61]

A That was just part of the job. It's a function of the job.

Q And would this be a kind of thing you might do very, very frequently; for instance, every day you might have some idea or not so frequently?

A No, no.

Q How often would you, for instance, tell a sales representative "I think we are weak in the Wausau supermarkets. I want you to spend some of your time going to them"?

A I would just do that on a one to one basis with the field representative.

Q I see. Did all of the field -- Did all of the sales representatives work at your direction?

A Well, first of all, we are all trying to carry out the company goals as well as the district goals and as well as the regional goals, so you have it three-fold.

. . . .

[65]

COMMISSIONER SMITH: Before you do so, I'll ask the question that I had intended to ask. Mr. Kroyer, were there ever any instances in which you were riding with the district -- with a district -- or a sales representative, presumably in the company car assigned to him, if I understand the procedure, but you were going right by the office of a vending machine company of the Sentry or Kohl's home office. Were there any such instances in which you would interrupt your coordination of the work of the individual sales representative by stopping to check with one of those direct accounts?

THE WITNESS: I wouldn't think so much with Kohl's or Sentry but more than likely a representative could have made the vending call with me.

[66]

COMMISSIONER SMITH: All right. So that when you are estimating your fifty percent of time with the field representatives, that could well have included some contact with these vending machine operators or vice versa?

THE WITNESS: That's accurate.

COMMISSIONER SMITH: Would it be correct to suppose that although you were making primarily contact with a vending machine company, that the field representative would also ride along on that?

THE WITNESS: Could have happened, yes.

COMMISSIONER SMITH: And he would participate rather than sit in the car while you were there?

THE WITNESS: Yes, most definitely. All of the field representatives knew the vendors because I couldn't be every place at all times. So they would help out locations. Just the primary responsibilities with the vendors fell with me.

. . . .

[95]

Q Mr. Kroyer, does a regional -- did you as a regional manager in the State of Wisconsin in 1973 to 1976 period or any sales representatives working in Wisconsin during that period have any responsibility whatsoever with placement of local ads?

A None whatsoever. It's all determined by our people in Chicago and the ad agencies. We have in the field no input.

. . . .

. . . .

[99]

Q Would you state your name for the record and spell your last name?

A Gary James Hecht, H-e-c-h-t.

. . . .

Q Would you briefly describe your employment history with the Wrigley Company?

A Yes. I was hired in Milwaukee in 1965. I transferred to Davenport, Iowa in 1969 as a field representative. I beg your pardon. I transferred to Omaha, Nebraska in 1969 in March, and then in August of '69 I transferred to Davenport, Iowa. And in March of 1976

I was promoted to regional sales manager and transferred back to Milwaukee.

[100]

Q Did you experience any changes in the boundaries of the region during the period of 1976 to 1978 when you were regional manger in the State of Wisconsin?

A Yes.

Q About six months after I came to Milwaukee, would have been maybe September or October in 1976, they created an additional region in the Midwestern district located in

[101]

Peoria, Illinois, and at that time the representative who was headquartered in Rockford was taken out of my region and assigned to the Peoria region. That included the -- Part of that territory included some counties in Wisconsin which included Rock County, Janesville, Beloit, that area, and also -- and I don't know if it coincided with the creating of the Peoria, but about that same time, maybe it was early 1979, the company had an overall readjustment and regional boundaries. And at that time the western portion of the state, western counties in the State of Wisconsin including the Iowa area, Dubuque, was also taken out of the region then and so was Kenosha County, Wisconsin.

. . . .

Q So for the majo: part of the time when you served as regional manager in the State of Wisconsin during the '76 to '78 period, is it your understanding that the region,

[102]

the Wisconsin region or Milwaukee region as it has been described, was smaller than it had previously been?

A Yes. When I took over, there were five representatives, and within a year it had changed to four representatives.

Q Directing your attention to the 1976 to 1978 period in which you served as regional manager in Wisconsin, did your duties as regional manager include responsibility for soliciting sales from key accounts in the Wisconsin area?

A Yes.

Q What is your understanding of the term key account?

A We have twenty percent -- approximately twenty percent of our direct accounts are responsible for eighty percent of our total volume, and any one of those twenty percent group accounts is considered a key account.

Q So are you saying then that having responsibility for key accounts is synonymous with having responsibility for approximately eighty percent of the total volume of that period of time?

A If I was responsible for all of the key accounts, yes.

Q Did being responsible for key accounts involve spending a portion of your time out in the field making sales calls on accounts?

A Yes.

Q What was your purpose when you made a call on a key

[103]

account or a major account in the 1976 to 1978 period?

A Well, the primary purpose was to solicit business via increasing distribution of our brands and packaging or implement selling and implementing a display of a merchandising program and/or presenting and obtaining an order for promotional sales.

Q Now, when you are talking about soliciting business from a key account, does that often involve an extended, in terms of days, weeks, months, period of time in order to achieve a particular result with respect to ultimate solicitation of sales?

A Yes, it does. I could cite an example. When I took over in 1976, the Sentry stores, which is operated by the Godfrey Company, did not merchandise chewing gum at their checkouts. This is a major goal of our company to have such merchandise, and it takes repeated attempts to get approval to convince them to merchandise at the checkouts. From the time they first indicated an interest to merchandise at the checkouts to the time we finally implemented a program at their checkouts, they ran about three years. It was three years of ongoing negotiation with numerous people within the organization all who were involved in the decision-making process.

Q Could you estimate for me the portion or percentage of your working time that you spent out in the field in

[104]

connection with the solicitation of sales from key accounts during the 1976 to 1978 period?

A I'd say between forty and sixty percent.

Q Was the majority of this time spent in connection of key accounts solo time; that is, time in which you were involved primarily alone in connection with these solicitation activities?

A It's really difficult to nail down percentages because some of the accounts I was directly responsible for and some of the accounts I called on with representatives. I would say forty percent of my time was spent solely on headquarter activity.

Q And an additional portion of your time was spent in the company of sales representatives in connection with solicitation of sales activities?

A Yes, at headquarter level, correct.

Q Did you also spend a portion of your time, either alone or in the company of sales representatives, on sales calls of accounts other than key accounts?

A Yes.

Q Have you any idea how much time in terms of percentage of working time that you devoted to being out in the field making sales calls in connection with accounts other than key accounts?

A Again, we are talking about the 1976 to 1978 period.

[105]

A Well, the non-key accounts could be direct accounts, could be headquarter type calls. Non-key accounts -- it could also be retail-oriented calls, and it might be another thirty to forty percent.

Q Just by way of clarification, what percentage of your working time would you say that you devoted to activities in the field in connection with solicitation of sales, either with respect to key accounts or with respect to non-key accounts, whether they be headquarter accounts or other types of accounts; in other words, the total amount of your working time?

A Ninety to ninety-five percent.

Q Now, in addition to your key account work which included field work in connection with our sales representatives and/or in field work in connection with non-key accounts, did you also devote a portion of your time to conducting sales meetings of your representatives?

A A very small portion.

Q During the 1976 to 1978 period, how often did you hold group meetings of your sales representatives?

A Once, possibly twice per year.

Q Where were such meetings typically held?

A Typically at a hotel or motel.

Q How long does such a meeting typically last?

A Typically a day.

[106]

Q And what was the purpose of such meeting?

A Generally it was when the company had a major thrust or objective such as the introduction of a new brand or a new packaging, major goal such as that, of which the details were important to communicate

accurately and necessitated getting together with the field representatives face to face, and group meetings seemed to be the best avenue to take.

. . . .

Q Can you describe the managerial work that you did?

A Well, since the advent of the photostat machine, there seems to be a lot of administrative -- a lot of communicative type of duties. Primarily it was administrative work, either corresponding to the -- to my superiors what was taking place in the field or communicating occasionally with the representatives as to direction that we should take or strategizing what needed

[107]

to be done to build sales, as well as reading and monitoring the daily reports that the field representatives submitted to me which was an account of their work.

Q What was your typical method for communicating with sales representatives during that '76-78 period?

A Telephone.

Q You estimate approximately what percentage of your communications with the representatives occurred by phone?

A Most of them spoke with the representatives by phone almost daily, ninety, ninety-five percent.

Q During this period of time, did you also spend time out in the field substituting for representatives who were ill or on vacation or who had quit and were no longer working for the Wrigley Company?

A Absolutely.

Q Was that the normal procedure at that time for you to fill in for individual representatives who, for one reason or another, could not fulfill their duties in their particular area?

A Well, when a representative left for one reason or another, the work load still remained, and general procedure was I would fill in, make the, particularly, the headquarter calls or important retail calls. If it

[108]

was feasible to close the ranks by having some of the other representatives fill in a portion geographically, that also might have been incorporated; but I had a carrying bag just like the representatives and would go out and make the calls.

COMMISSIONER SMITH: Mr. Hecht, will you define headquarter calls or headquarter work? You used the term headquarter calls.

THE WITNESS: Yes. Headquarter call would be contact on a buying office or warehouse of an operation that usually had three or more retail outlets.

. . . .

Q How did the process for hiring new sales representatives during the 1976 to 1978 period work?

A Well, if someone left the Wrigley Company, the first thing I would have to do is receive permission from my superior to fill that vacancy in the location where it occurred. Second order of business, once getting that approval, would be to select a candidate. If I happen to

[109]

know somebody or had some referrals from our employees, I would interview those people. If I didn't have any in my hip pocket, then I would place an ad in the newspaper and contact job service. Does that fully answer your question?

Q Yes. And assuming an application and response to those activities was received, did you then conduct an interview of an applicant?

A Yes. In the ad we asked for resumes, and upon receiving resumes, we would contact the respondents; and I would set up interviews and go through the selection process and usually get down to about two or three potential candidates. I would then brief my superior as to the background of these candidates and arrange a second or possibly third interview at which time the district manager might have accompanied me, and the final decision would be made as to who would get the job.

Q Where did the interviews that you have just described take place?

A Well, if I was out of town, for instance, in Green Bay or Madison or -- well, Green Bay I can speak -- usually at the hotel where I was staying in my room. If it was in Milwaukee, at that period of time probably at a Big Boy restaurant or whatever table space might be available.

[110]

Q Who made the final decision with respect to whether an applicant was hired?

A Well, my district manager would have had the final decision.

Q Is that also true with respect to whether a particular employee was terminated?

A Yes.

Q During the period of time in which you served as a sales representative for Wrigley, did Wrigley at any time maintain an office in the State of Wisconsin? Excuse me, regional manager?

A No.

Q Similarly during the 1976 to 1978 period when you were regional manager in Wisconsin, did Wrigley own or rent any real estate in the State of Wisconsin?

A Not to my knowledge.

Q During that same period of time, did the Wrigley Company ever have a listing in the telephone directory?

A No.

Q During the '76 to '78 period when you were regional manager, did either you or any of the representatives in the region in which you worked have any discretion with respect to pricing the Wrigley product?

A None whatsoever.

Q During the period of time in which you served as a

[111]

regional manger, specifically 1976 to 1978, did the Wrigley Company maintain manufacturing facilities in the State of Wisconsin?

A No.

Q All Wrigley products are shipped into the State of Wisconsin by common carrier?

A That's correct.

Q All orders for Wrigley products generated in Wisconsin are accepted and filled in Chicago?

A That is correct.

Q What information, again referring to the 1976 to 1978 period, what information was printed on the business cards of your sales representatives?

A I think a logo of our four brands of chewing gum, company name, the Midwestern district telephone number and address, and the representative's name.

Q Was the representative's telephone number printed on the card?

A No.

Q Mr. Hecht, I'm going to show you what's been marked as Exhibit B. Take a look at that, please. Would you identify that document, please?

A It appears to be our current order form for taking orders from accounts.

Q Is that order form essentially the same as the order form

[112]

which was utilized in the 1976 to 1978 period?

A Essentially except it contains a few more items that we now manufacture we didn't then.

Q Directing your attention to the bottom lower left-hand portion of the form, what language is printed at the very bottom of the form in the lower lefthand portion?

A It says all orders are subject to acceptance or rejection by the William Wrigley Junior Company.

. . . .

Q Mr. Hecht, did you ever have occasion in the 1976 to 1978 period when you were a regional manager to conduct a seminar or training session for a customer with respect to the use of Wrigley product?

A No.

Q Or with respect to repair or maintenance of Wrigley display cases?

A Not to my recollection.

Q During the period in which you served as regional manager

[113]

in Wisconsin, specifically the 1976 to 1978 period, did you or any of your sales representatives in Wisconsin have occasion to approve or disapprove a grant of credit to a customer?

A No.

Q Where were the decisions with respect to granting or disapproval of credit made?

A We have a credit department in our corporate office who makes those decisions.

Q And where is that office?

A In Chicago.

Q So neither you nor your sales representatives have anything to do with credit?

A No.

Q During the period in which you served as the regional manager in Wisconsin, specifically the 1976 to 1978 period, did you have occasion to accept a check from a customer in payment of an outstanding balance?

A No.

Q An account -- Again with reference to the 1976 to 1978 period when you were regional manager in Wisconsin, when an occasion would arise when an account became overdue, were you involved in that?

A Not directly. I received copies of correspondence that went from our credit department to the account which

[114]

outlined the invoices that may have been past due or any other problem that our credit department may have been experiencing. I received copies of this correspondence.

Q During the 1976 to 1978 period of time, how many copies of such correspondence did you typically receive in the course of a year?

A That's real tough to say because some customers have accounting methods that tend to generate these types of letters regularly, but in a given month I'd say I might see ten to twenty such letters go out to customers.

Q What, if anything, did you do in response to receiving these copies from the letters from the credit department in Chicago to the customers?

A I usually threw them in the wastebasket. I don't mean to be facetious, but it didn't involve me, and once I read them, I discarded them because it required no action on my part.

. . . .

[115]

Q Mr. Hecht, I believe you testified that during most, if

[116]

not all, of the 1976 to 1978 period when you were regional manager, Gerry Marx was the district manager for the region which included Wisconsin?

A '76 to '78. It might have been right toward the tail end of '78 that he transferred to another department. He was the district manager for most of that time.

Q Could you briefly describe the district manager's functions during that period of time?

A Well, he was in the decision-making capacity, and he was responsible for all activities that took place within the geographical boundaries of the districts including decisions on hiring and firing and sales strategies. He was accountable for sales and distribution of our products.

Q During the 1976 to 1978 period, did Mr. Marx have occasion to come into Wisconsin?

A Yes.

Q Approximately how many working days in the course of a year during that period of time did Mr. Marx spend in Wisconsin?

A Well, 1976 in March I was new in my position, so he probably spent a little more time in Wisconsin with me or with my representatives, but normally I would say six to eight, nine days something like that.

Q Were some of those days or portions of those days

[117]

actually spent out in the field with Mr. Marx out in the field?

A All of these days were spent in the field.

Q That is, Mr. Marx got involved in sales calls on various types of points?

A Absolutely. He may have been with me calling on a customer. He may have been with one of the representatives calling on a customer, or on occasion he may have been calling on a customer by himself; but it always represented calling on a customer to sell our product.

Q Did Mr. Marx also attend any sales meetings during the 1976 to 1978 period?

A I believe, yes.

Q How often?

A Well, as I mentioned, we had one, possibly two per year, and I don't believe he was in all of them. So during that period there may have been anywhere from two to four, and he may have been at one to two.

I really don't recollect, but being a new regional manager, I was almost certain he was at at least one.

. . . .

[118]

Q Mr. Hecht, are you familiar with the situation that pertains to Mr. Kuckkahn in the rental of Reynolds Transfer and Storage for him to keep his supply of gum and displays in?

A Yes.

Q And did that situation -- Was that the situation in 1976 and 19 -- through 1978?

A Yes.

. . . .

Q Do you happen to know how much that cost per year for storage charges at Reynolds Transfer and Storage for Mr. Kuckkahn's materials?

. . . .

[119]

THE WITNESS: Fine. I understand. To my knowledge, I would estimate at less than three hundred dollars per year.

BY MR. GREENWALD:

Q I see. And as far as you know, the only thing that's being stored is either a supply of fresh gum or displays or possibly stale gum or which?

A A combination of all three.

Q All three are likely to be stored?

A Um-hum.

Q Was anything else likely to be stored in connection with Mr. Kuckkahn's situation?

A No.

. . . .

[122]

Q You testified regarding what I interpreted to be some Dunning (sic.) letters; is that the correct term, that when somebody is sent a letter requesting them to pay the bill and threatening some action? Did you get copies of

[123]

those?

A First of all, I'm not familiar with the term Dunning. Secondly, the letters that we sent to customers were more in the form of a reminder that a bill was still outstanding as opposed to a threatening letter.

Q I see. Were the letters you referred to, did they eminate from the Wrigley Company?

A Yes, they did.
Q And those were the ones you threw in the wastepaper basket?

A By and large, yes.

. . . .

[125]

Q How many vacancies in sales representative positions did you have in 1976?

A I don't think I had any in 1976.

. . . .

[126]

Q And did you have any vacancies in '77?

A Yes. I was coming back to that question. I believe I had one, possibly two in '77.

Q And did you have -- And how did you go about recruiting for those two positions?

A I would have contacted -- Let me think of who I hired. I believe it was through an ad in the paper. I would have contacted job service, possibly the local universities, and put an ad in the papers.

. . . .

[127]

Q And how about for the Radosevic vacancy?

A It seems to me that I did not have to advertise for Rick. I believe I had received a referral from somebody with Rick, and I don't think I interviewed as many. I would have interviewed more than just himself, but I don't

[128]

remember how many others.

Q And that takes care of all the hiring that took place during that period as far as you were concerned?

A As far as I can remember.

Q What did you do in terms of orienting these people to their new positions?

A Well, we had a system very similar to what John Kroyer described insomuch as the first day or two might have been spent with the new hire and myself whereby materials and his automobile would be turned over to him. At that point he would spend the next three weeks working with one of our veteran salespeople, about one person per week, covering various subject matter. Following that, his fourth week, I would work with him. Beyond four weeks, we pretty much felt the individual was capable of beginning on his own, but he would work with the regional manager periodically to ensure that he was fully knowledgeable, capable of handling his responsibilities.

Q And did you make periodic job performance evaluations of these sales representatives that were assigned to your region?

A Yes.

Q Did you have anything to do with any promotions relative to any of the sales representatives?

A Well, I could not authorize an employee promotion for

[129]

anyone. I could recommend or discuss the talents of an individual, but his promotion would be a responsibility of my superior or someone else in Chicago.

Q And did you have any authority relative to their compensation?

A No. The amounts of compensation with the ranges were predetermined through our personel offfice. I would recommend an amount commensurate within that range and the district manager would approve or disprove that amount or perhaps change that amount, depending upon his view of the representative's performance and his own district budget.

Q Did you have any authority with regard to the discharge of persons who were employed as sales representatives within your region?

A I did not have the authority in ordinary circumstances to discharge someone. However, I would be the first to know if someone were not performing to standard at which time I would discuss the matter with my superior, and the next steps or strategy would be worked out. It usually would involve sitting down with the representative, advising him of the nature of the problem, recommending corrective angles, and if necessary, writing a letter of probation. Following that, if the directive wasn't acted upon, the final decision would be arrived at through the district

[130]

manager and myself, and I would be responsible for the physical aspect of the termination.

Q What you mean by that is to tell the person they were fired?

A Exactly.

. . . .

[133]

Q I think earlier in your examination you indicated that you might indeed spend almost one hundred percent of your time calling on various accounts; is that accurate?

A I don't think that is.

Q Well, let me tell you what I have reference to. You indicated that perhaps you would be calling on your own accounts alone forty percent of the time, and twenty percent of the time you might be accompanied by sales representatives. And then thirty or forty percent of the time you might be calling on either direct non-key or retail accounts. Now, that strikes me that if you add that all up --

A Well, I think if you would check the record, I was referring to a range of time. The first part I mentioned forty to sixty percent, and as we detailed, I made mention of the fact that some of this time overlapped. So it was difficult to come down to a specific percentage of time, but to be more specific, I said ninety to ninety-five percent of my time was spent in the field.

. . . .

[136]

Q Did you have occasion to take any adverse personnel action against any of your sales representatives?

A You mean by adverse, firing them?

Q Firing them, writing a letter of reprimand, or just those two.

A During that period of time we are speaking, '76 to '78, I am certain that one individual was fired, and during

that time it may have been two. And if they were fired, I'm certain there would have been a letter of reprimand made.

Q Do you know the -- Do you know what year you -- Did you fire anybody in '76?

A No.

Q Did you fire anybody in '77?

A Yes.

Q And what was the name of the individual?

A Greg Gabryz.

Q How do you spell his last name?

A Now, you know -- Let me back up for a minute. To my recollection, I'm not entirely certain if I fired Greg

[137]

Gabrys or if he quit. I just can't remember.

. . . .

Q And what was the other individual?

A I know that Mike Perlewitz was fired.

Q Why was he fired?

A He did not perform the job satisfactorily.

Q Did you recommend that he be fired?

A Yes, I did.

Q Did your district sales manager agree with you and concur in that and was he fired?

A Yes, sir.

. . . .

COMMISSIONER SMITH: All right. We'll go back on the record. We'll declare a break momentarily, but Mr. Hecht, while I have it in mind, the letter, left corner of Exhibit B, contains the statement "orders were subject to acceptance or rejection by the home office in or near Chicago." Do I presume that in the ordinary course of business, the acceptance consisted simply of filling the orders; is that right?

[138]

THE WITNESS: Ordinarily that's what one would think. However, there are some packagings, for instance,that we prefer certain trade classes not receive. If the trade class has ordered that type of package, people in Chicago would determine that they would not maybe want to fill that particular order or when someone orders product, they may submit it on a purchase order stating their own terms. They will purchase the product if they can fill the bill in forty-five days in which case our company could say we can't accept the order.

COMMISSIONER SMITH: And that leads to the next part of my question. Suppose that a particular customer developed a representation for being slow pay or argumentative on the quality of the products or something of the sort. Do you know of any instances in which the home office rejected the order?

THE WITNESS: I know that there have been occasions when at first, if they were slow pay, the company, the credit department, would notify the account that they would accept future orders only with a certified check. Sometimes they customer would go along with that, and other times the customer may decide that they can't go with those terms and choose to purchase our product through another source of supply or not to carry

[139]

our product.

. . . .

[143]

BY MR. GREENWALD: Yes. If you would look at Exhibit 21 that's the next exhibit on the dias. Can you identify what Exhibit 21 is?

A The cover page is a letter to Mr. Clauter indicating that four people within his district would be receiving a salary increase effective September 1st. And there is a check next to the name of Mr. Cichocki. Mr. Cichocki was in my region.

Q And is page two of the exhibit a report by yourself to your supervisor grading Mr. Cichocki?

A It appears that's exactly what it is.

Q And is pages three and four essentially the same for a different time period?

A Essentially, yes.

Q And in both of those grading reports, they also recommend salary increases; do they not?

A Yes, they do.

Q And the pages that are authored by Mr. Marx would indicate his action on your recommendation?

A Understand that the amounts that are inserted here as a salary recommendation come off of a salary chart that is supplied by Wrigley Corporate indicating the amount of money that can be given for certain performances, so what I have done is indicate that amount of money based on

[144]

that chart. And then it appears that Mr. Marx may have double checked to see if that in fact was correct or fit in with his budget, and based on his findings it appears that he okayed that recommendation.

Q If you had determined that this particular sales representative hadn't been doing his job, could you have recommended that he not get a salary increase at all?

A What I could have recommended is that his performance was less than what was expected, and whether or not he received it, he would have been given a performance rating which would have put him at a certain level. That level would have dictated whether or not he was eligible for an increase at that time. And that's determined by people in Chicago.

Q Well, just taking the last page, there is an indication, or as an example, for instance, it starts off "strongly recommended that consideration be given" -- your representative, and his name -- "a fifty dollar per month salary increase." Could you have said I recommend that this person not be given any increase unless the salary schedule requires that he get one?

A I could have made that recommendation if I would substantiate it as to why.

MR. GREENWALD: I offer Exhibit 21 in evidence.

. . . .

[160]

Q Mr. Hecht, during the 1976 to 1978 period when you were

[161]

regional manager in the State of Wisconsin, do I understand that representatives in your area kept on hand a supply of gum utilized for samples and exchange purposes?

A Yes, they did.

Q Could you estimate for me the approximate dollar value of the gum typically kept on hand by an individual representative at any one time during the '76 to '78 period?

A I could if you give me a minute to think about it. I'd say between seven hundred dollars and a thousand dollars.

Q Mr. Hecht, during the testimony you have just given, you have from time to time used the first person plural we and us in responding to a number of questions that have been presented to you. Would it be fair to say in each of those cases that your reference to we and to us is a reference to the Wrigley Company?

A Yes.

Q With respect to the orientation that you have testified that new representatives went through at the beginning of their tenure, was all of this orientation in field orientation?

A Yes, it was on the job training.

Q And did this on the job training occur within the context of sales calls being made during that period of time?

[162]

A Yes.

Q Mr. Hecht, you have testified to I believe what's been termed a redrawing of retail sales boundaries, and I believe you characterized that redrawing as occasional; is that correct?

A That is correct.

Q Approximately how many times during the course of the 1976 to 1978 period did such a redrawing of boundaries occur?

A I think during that period it happened once.

Q And would that have been in connection with a change in the number of sales representatives working within the region?

A Yes.

Q Mr. Hecht, you responded to a lot of questions relating to various performance appraisals for sales representatives.

A Um-hum.

Q In your region during that particular period of time, -how often were such reports submitted to Mr. Marx?

A For the majority I'd say at least one a year. I should say at least once a year, but once a year. At that point in time representatives were evaluated on an annual basis.

Q So the norm was once a year?

[163]

A Right.

Q So if you had four sales representatives within your region, you generally submitted a total of four reports in the course of a year?

A That's correct.

Q Directing your attention to Exhibit 23 --

A Yes.

Q -- specifically to the fourth paragraph of Exhibit 23, this additional coaching which is referenced in the fourth paragraph of 23?

A Which page are you -- Okay.

Q That would help, wouldn't it? Third from the last page.

A I have it.

Q Fourth paragraph, would this additional coaching take place in the field in connection with sales calls?

A Absolutely.

Q And directing your attention to the very last paragraph of that page of Exhibit 23 which paragraph reads "he received his last raise on November lst and based on his good development, I'm recommending a salary increase of fifty-five dollars per month effective 4-1-77", was that the type written portion as it appeared when you submitted it to Mr. Marx?

A I recommended fifty-five dollars, and he overrode my recommendation and raised it to sixty dollars.

[164]

Q So the handwritten sixty dollars, which is written over the fifty dollars there, which comes below or above.

A In addition to that I recommended it become effective on April lst and he made it effective March lst.

Q Directing your attention to Exhibit 25 --

A Yes.

Q -- specifically to page four of Exhibit 25, the reference to ongoing guidance to which you have testified?

A Yes.

Q Would that guidance take place in the field and in connection or in the context of sales calls being made on customers?

A Yes.

Q And three pages further in the same exhibit --

A You are referring to --

Q I'm referring to a page which is dated 10-25-76?

A Um-hum.

Q Subject is T. Albers rating report?

A Yes.

Q And specifically to the third paragraph of that page.

A Um-hum.

Q Does that paragraph reflect that you recommended a salary increase of sixty-five dollars?

A Yes, that's what I recommended, but that's not what happened.

[165]

Q What happened?

A Mr. Marx overrode my recommendation, and in this case he allowed a sixty dollar increase.

. . . .

Q Directing your attention to Exhibit 26 --

A Yes.

Q -- and specifically to the sixth page of Exhibit 26 which page is dated 8-15-77 and entitled subject, R. J. Kuckkahn grading report --

A Yes.

Q -- and specifically to the last paragraph of Exhibit 26, does that paragraph indicate that you recommended an

[166]

increase of ninety-five dollars?

A That's correct.

Q But that that increase is crossed out and that Mr. Marx instead substituted an increase of eighty dollars?

A That is correct.

. . . .

[168]

Q If you would state your name, please?

A Richard J. Kuckkahn.

. . . .

Q Mr. Kuckkahn, you have had an opportunity to inspect

[169]

Exhibit 15. What position did you assume in October of 1973 when you were hired by the Wrigley Company?

A Field representative.

. . . .

Q Could you describe in your own words what your duties have been in that position? Let me first ask you, have you continued in that same position through 1978?

A Yes.

Q And how would you describe your duties?

A I describe them as primarily to maintain the sales of the product that we have presently and then to use whatever tools that have been given to us to increase the sales.

Q Does this involve making calls on both direct accounts and indirect accounts?

A Yes.

Q What do you try to accomplish when you are calling on a direct account?

A It depends on the direct account.

Q And what does it involve in terms of physical activity on your part? Is it a meeting with the purchasing officials for the direct account or what?

[170]

A Again, it just depends on the type of direct account.

Q And would you just describe the scenario if you were to call on an indirect account in terms of what you might most likely do when you arrive at that retailer's store?

A Okay. It would involve making a physical appraisal of the condition of the store as far as our merchandising -- merchandising of our product. It would be coming prepared to the account with any specific goals or objectives that I might have or the company might have that would relate to that account. It would mean contacting the key person in the store in that account for the goal of accomplishing any of those objectives that the company might have or to inform the accounts

of any problems or opportunities that the accounts might have in regards to our product.

Q Would the making of the physical appraisal involve looking over the displays and seeing how many different brands of Wrigley gum are being displayed. Is that part of that?

A Yes.

Q Do you also check the dates on the chewing gum to see whether it's stale?

A Yes.

Q And how do you determine if a piece of gum is stale?

A The company has an open dating practice on the side of each box. It's plainly printed that the product is fresh only until such and such a date, and on other packaging there is a number imprinted on the side of the package itself which represents the month that it was produced. And we know at that time the product was good. It remained fresh for six to seven months.

Q Do you have with you now a package of gum that might be similar to the package that would be sitting on a retailer's shelf in that box?

A Yes.

Q Could you take that out, please?

A This is a typical box.

Q Could you tell from examining the box that you are holding whether it is stale or not?

A Yes.

Q And how do you do that?

A It stays here on the side that the quality insurance date is November 9th of '85 which tells me that it's fresh until November 9th of 1985.

Q Now, if the gum is sitting on the retailer's shelf and the date has passed, what do you do then?

A Well, I check to see if there is anymore.

Q Okay. And you have made your total check and you know that it's just that one package. What do you do then?

A Then I notify the appropriate personnel in the store and

[172]

suggest to them that I take that out of the store and replace it with something that's fresh.

Q I see. And does that cost the retailer anything for you making that change?

A No.

Q And then what do you do with the stale gum?

A I maintain it until the supply is sufficient enough to well warrant -- or becomes a problem for me, and then it's destroyed. At that time we would package it up into cases and seal it and send it back to Chicago.

. . . .

[173]

Q Mr. Kuckkahn, I take it that the sample that shows it's fresh until November 9 of '85 is similar to what occurred during the period '73 to '78; is that correct?

A Yes.

. . . .

[174]

Q Now, what about the situation where you are putting in a new display stand. Do you ever stock that display stand from gum that you are carrying with you?

A Occasionally.

Q And how frequently might you do that?

A Back then maybe once a month.

Q And what happens -- First of all, do you suggest that you stock the stand, or does the retailer ask you to stock the stand?

[175]

A Boy, that's -- Generally, it's a upon request I think.

Q And what happens after you have taken the gum from your vehicle and you put it in the stand? What happens in terms of is that then transferred to the retailer without any charge to him?

A No.

Q How does it wind up that the retailer pays for this gum?

A It would one of two ways, I believe, or primarily two ways. I would either inform his supplier that he had accepted some merchandise, and then that supplier in turn would bill him; and then I would replenish my stock from that supplier's stock. In other words, if I gave a restaurant a box of Doublemint gum, I would write a receipt that I made that transaction with the retailer. I would go to the wholesaler and say "I just made this transaction with this account. Here is the receipt." I would pick up one box of Doublemint gum. He in turn would bill him, or I would fill out one of those agency stock transactions that we have, and that in turn would go to Chicago. And Chicago in turn would bill the supplier, and the supplier in turn would bill the retail account.

Q And you indicated that this might happen once a month that this kind of transaction took place and that would be true for this entire six year period or five and some

[176]

months that we are talking about?

A Yes.

Q Was your supply of gum and stands stored at Reynolds Transfer and Storage in Madison, Wisconsin?

A Yes.

Q And did you get billed personally for the storage?

A I never got billed. I went right to the office every month and just paid the feed.

Q And then did you put the payment you made to Reynolds on your expense account?

A Yes.

Q And you received reimbursement from Wrigley for it?

A Yes.

. . . .

[178]

Q And the supply of product that you kept on hand for sample purposes and exchange of fresh gum for stale gum purposes, how would you estimate the value of the supply of gum you generally had on hand at any one time during that period of time?

A You mean an average cost?

Q Average.

A Again, probably a thousand dollars in ballpark figure.

COMMISSIONER SMITH: Mr. Kuckkahn, we have talked throughout about average value here, but everybody has neglected to mention whether this was retail or wholesale value. Which are you speaking of?

THE WITNESS: Wholesale.

. . . .

Q In these situations where you will stock a stand for a retailer, can you estimate on the average how much gum -- the retail value of the gum you are transferring to?

[179]

A The value of the gum that I transferred, not that he already had?

Q Right.

A Okay. Wholesale?

Q No, retail value.

A Retail, less than twenty dollars.

Q So that would be your average figure? It would be less than twenty and maybe more than fifteen if you were to take a range?

A Well, I would say the range would probably be more like eight dollars to -- eight to six, twelve or sixteen dollars, but it would never be more than, I would say, twenty dollars.

. . . .

COMMISSIONER SMITH: Mr. Kuckkahn, one question that has crossed my mind repeatedly, as I understand it, the sales business is largely impulse in nature. During the course of your work as a sales representative for Wrigley, if a merchant had a stand similar to the one that you have here in the back corner of the store somewhere instead of up near the cash register, what, if anything, would you do to attempt to get him or her to change the location?

THE WITNESS: Well, I would attempt to bring him to the conclusion that it would be in his best

[180]

interest to move it to an area that would receive higher traffic.

COMMISSIONER SMITH: All right. From someone's testimony earlier, I understood that you encouraged retailers who located these products near

the cash register, the impression that I got without anybody saying it, was because a retailer would realize a higher profit margin on the sale of those items than he would have. I don't know how accurate it is to compare flashlight batteries or something else that is frequently located near a cash register, but is it correct that the retailer would be encouraged by this relatively high margin in connection with your products as contrasted with magazines or something else that might be near a cash register?

THE WITNESS: That's a fair statement.

. . . .

Q Mr. Kuckkahn, you have given testimony with respect to what types of activities you might engage in in making a

[181]

call on an indirect account. What percentage of time in which you engaged in those activities would you estimate that you did so with the purpose of increasing sales of Wrigley gum?

A In almost every instance the purpose is to increase sales.

Q So that's true with respect to the activities which precede the conversation or the sales presentation that you make to the individual of that account with whom you deal?

A Yes.

EXHIBIT 13

[William Wrigley, Jr. Co. Letterhead]

October 13, 1978

Department of Revenue
Central Compliance Section
P.O. Box 8902
Madison, Wisconsin 53708

Attn: Mr. R. L. Blodgett

Gentlemen:

In response to your letter dated September 19, 1978, the Wm. Wrigley Jr. Company has four representatives who live and work in Wisconsin. In addition, two other nonresident representatives spend approximately 25% of their time in Wisconsin.

The average value of gum carried by each representative is approximately $3,750. Displays are shipped to the representatives from Chicago, who give them free of charge to the retailers. The amount of displays any representative would have on hand at any one time is estimated to be $3,000.00. The total cost of displays shipped to Wisconsin amounted to $45,000.00 in 1976 and $63,000.00 in 1977.

If we can be of any further assistance please let us know.

Yours very truly,
WM. WRIGLEY JR.
COMPANY

/s/ Gary E. Smith

Gary E. Smith

GES:rc